85-1875 (1)

Supreme Court, U.S.
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CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

FEBRUARY TERM 1986

THOMAS L. SCHUCHMAN, ET UX PETITIONER,

v

UNITED STATES, SOLICITOR GENERAL CHARLES FRIED, JUSTICE DEPARTMENT, ATTORNEY GENERAL EDWIN MEESE, U.S. ATTORNEY FREDERICK J. HESS, AUSA CLIFFORD J. PROUD, U.S. MARSHALS SERVICE, DIRECTOR STANLEY E. MORRIS, U.S. MARSHAL DONALD R. BROOKSHIRE, DEPUTY MARSHAL ROBERT WINKLEMAN, DEPUTY MARSHAL RICHARD WOODARD, SMALL BUSINESS ADMINISTRATION, ADMINISTRATOR JAMES SANDERS, ASSISTANT ADMINISTRATORS, JOHN E. LAGOS, CHARLES R. HERTZBERG, EARL CHAMBERS, PATRICK H. STIEHMS, ERIC BENDERSON, WILLIAM A. KRAJEC, MARJORIE L. CASEY, W.K. ANDREWS, aka R.K. ANDREWS, aka ROBERT K. ANDREWS, DONALD I. BROOKHART, aka D. I. BROOKHART, ET AL UNKNOWN

RESPONDANTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Thomas L. Schuchman
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Terry Lynn Schuchman
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65 pp

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED FOR REVIEW

Whether district court has committed prejudicial error, inter alia, in its assumption of jurisdiction prior to final SBA Administrative review and is clearly erroneous, inter alia, in its failure to consider sua sponte ownership of direct loan at trial, and has denied due process and equal protection, 35/ inter alia, by its failure to recuse 1/ and by its refusal to issue summons on Petition for Judicial Review 2/ filed 2-7-83 ordering clerk not to attach proof of service submitted thereon and finally in its denial of mandatory injunction and interlocutory appeal.3/ AND

1/ Findings of fact and conclusions of law on third formal motion to recuse heard 7-27-84 are submitted in separate appendix pursuant to Supreme Court Rule 21.1(k). 7th Circuit in its order 2-28-85 directs USA to provide necessary transcripts. USA designated entire (cont)

WHETHER PLAINTIFF'S EVIDENCE AT TRIAL WAS INSUFFICIENT TO SUPPORT THE FINDINGS BY DISTRICT COURT, LACKING PAST DUE NOTICES FOR NOV 1979, DEC 1979, JAN 1980, FEB 1980, INTER ALIA?

WHETHER SBA CONDUCT IN COLLECTION OF $8,000.00 WAS UNCONCIONABLE AND UNCONSTITUTIONAL AND CONTRARY TO 72 STAT 384 et seq?26/

WHETHER THERE WAS WANTON AND RECKLESS ABUSE OF POWER IN DEPRIVATION OF PROPERTY BY U.S. ATTORNEY, FREDERICK J. HESS, AUSA CLIFFORD J. PROUD; et al; U.S. MARSHAL DONALD R. BROOKSHIRE, SPECIAL DEPUTY MARSHAL ROBERT WINKLEMAN, AND DEPUTY MARSHAL RICHARD WOODARD et al; AND SBA ADMINISTRATOR JAMES SANDERS, ASSISTANT ADMINISTRATORS MARJORIE L. CASEY, WILLIAM A. KRAJEC, D.I. BROOKHART, et al?

1/ (cont) record. Pro se orders and pays for findings of fact and conclusions of law 7-27-84 but district court directs court reporter to limit same, and refunds money to pro se at hearing 3-8-85. USA does not comply with 2-28-85 7th Circuit order and does not provide transctipts of 7-27-84 hearing, or October 21, 1981, June 3, 1983, September 2, 1983 and May 4, 1984 hearings. Pro se Petitioner orders and pays for transcripts of 11-29-82, 2-18-83, 3-18-83 hearings, findings at trial 6-30-83, and findings at 7-27-84 hearing inter alia to recuse; and seeks transcripts of October 21 1981, June 3, 1983, September 2, 1983 and May 4, 1984 which district court denies repeatedly. See docket at July 18, 1985(cont)

FOOTNOTES (cont)

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and July 25, 1985 and 7th Circuit orders 5-2-85 claiming court cannot "certify" and 5-3-85 ordering all motions received " shall be returned to appellants without action." See also footnote 1/ in Separate Appendix pursuant to Supreme Court Rule 21.1(k).

2/ Complete district court docket 80-5143 is submitted in separate appendix (Rule 21.1(k)). See entry 7-27-84 and 9-5-84 motion to compel also included in separate appendix. 2-7-83 petition for judicial review is styled "Reiterative Answer" and is accompanied by proposed findings of fact and proposed conclusions of law. District court enters order 11-15-84 directing clerk not to file Proof of Service thereon. See Separate Appendix for copy of the order and Proof of Service submitted.

3/ SBA Administrators Marjorie L. Casey, William A. Krajec and D. I. Brookhart et al are subject to mandatory injunction when committing an act beyond the scope of agency authority. See Docket entry 9-25-84 for interlocutory appeal pursuant to, inter alia, 28 USC 1292(a)(1). Order 10-18-84 denying same is entered after Petition to Amend and Join is filed October 18, 1984. Docket entry on same shows October 19, 1984, but original in file has date and time stamp showing October 18, 1984.

35/ Footnotes are included in Separate Appendix as they are voluminous, pursuant to Supreme Court Rule 21.1(k) and were previously prepared and printed on 8 x 10 paper at clerk's instructions. See also Proof of Service included as last page of Separate Appendix.

26/ Id.

LIST OF PARTIES

Thomas L. Schuchman, Terry Lynn Schuchman, Lois C. Schau, USA, SBA Administrators James Sanders, Marjorie L. Casey, William A. Krajec, D. I. Brookhart, et al; Lynne Murphy; third party intervenor; First National Bank of Belleville; St. Louis Telephone Employees Credit Union; Mercantile Trust; unnamed parties plaintiff, Martin and Jacqualine Gomric. NOTE: See footnote 1/ in separate appendix for complete identification of each party named, and relationship one to another. 7th Circuit docket 4/15/85 lists letters of non-involvment but fails to file same, and enters order 4-26-85 that "court takes notice of the attached notices of non-involvement."

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FEBRUARY TERM 1986

No. _____

THOMAS L. SCHUCHMAN, ET UX PETITIONER

v

UNITED STATES OF AMERICA, ET AL RESPONDANTS

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

The petitioner, Thomas L. Schuchman, et ux, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered on 6 November 1985.

OPINION BELOW

The Court of Appeals entered its unpublished opinion affirming the foreclosure order in district court, (A-15, 16, 17, 18), which, at the same time, See Separate Appendix at A-22, dismissed with prejudice the Petition for Judicial Review filed formally by Petitioner February 7, 1983, supplemented and amended as appears of record, See Separate Appendix A-55, the

last time being July 27, 1984 (A-53) prior to filing of appeal and at the same time dismissed 85-2348 Petition for Judicial Review in 7th Circuit, joined for purpose of decision, giving as its reason "Schuchmans sought no review in the district court below." on November 6, 1985. A copy of the unpublished opinion is provided in separate Appendix at A-9 pursuant to Supreme Court Rule 21.1(k).

7th Circuit denied petitioner's petition for rehearing and suggestion for rehearing en banc on December 5, 1985. A copy of the order is included in separate appendix at A-1. Suggestion for rehearing en banc was filed separately as allowed on November 29, 1985 and is included in separate appendix at A-2.

JURISDICTION

On 6 November 1985, the Court of Appeals entered judgment affirming district court order, district court assuming jurisdiction pursuant to 28 USC §§ 1345. On January 30, 1985, the Court of Appeals entered an order that the issue of jurisdic-

tion would be considered on the merits, refusing to dismiss so district court could consider Rule 60(b)(3) motion, said order included in separate appendix at A-7. Petitioner contends lack of jurisdiction and denial of due process, inter alia.

The Court of Appeals failed to comply with its own order January 30, 1985, separate appendix A-7 and does not consider jurisdiction. See Separate Appendix A-39 for third party intervenor in district court and take due note 28 USC §§ 1345 does not authorize third party claims. Petitioner repeatedly cites also to district court and Court of Appeals 28 USC §§2409a(d).(A-41,42,32) The statutory provision conferring jurisdiction on this court to review the decision by writ of certiorari is 28 USC §§ 1254(1). Petitioner originally attempeted to file within the time allowed by law, February 4, 1986, and is timely now pursuant to letter of Joseph F. Spaniol, Jr. Clerk, U.S. Supreme Court dated

April 4, 1986.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

UNITED STATES CONSTITUTION, AMENDMENT IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches, and seizures, shall not be violated, and no warrants shall issue, (WRIT OF ASSISTANCE) but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

UNITED STATES CONSTITUTION, AMENDMENT V:

> Nor shall any person...be deprived of life, liberty, or property, without due process of law...

UNITED STATES CONSTITUITION, AMENDMENT VI:

> to have compulsory process for obtaining witnesses in his favor, (DISTRICT COURT CLERK'S REFUSAL TO ISSUE NOTICES TO DEPOSITION) and to have the assistance of Counsel for his defense (letter by attorney James C. Neville, withdrawing at last minute in district court trial exhibits, Def Ex. 'Y')

UNITED STATES CONSTITUTION, AMENDMENT VIII:

> nor cruel and unusual punishments

entered an order [illegible]

inflicted...(seizure of personal belongings of minor child Tracia Lorie Schuchman, physical assualt and black eye injury of Terry Lynn Schuchman)

UNITED STATES CONSTITUTION, AMENDMENT XIV:

Nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws... the Congress shall have power to enforce, by appropriate legislation the provisions of this article... (due process and equal right to deferment for entire period of deliquency on SBA loan, see separate appendix A-49, 50, also denial by state court in 82-LM-1278 of right to hearing and discovery process--see separate appendix at A-8.)

VETERANS LOAN PROGRAM

Authority Sec 5(b)(6) of the Small Business Act 15 USC § 631 et seq

13 CFR 122.14--EXTENSION OF LOANS.

"Actions taken by SBA pursuant to the authority of section 7(c) of the SBA Act, as amended, are limited to such periods of time as appear necessary to avoid forced liquidation of loans."

13 CFR 122.8--DIRECT LOANS.

"Direct Loans are those made by SBA to a borrower when no participation or guaranteed loan is available." (Lender of last resort.)

13 CFR 122.23(a)

> "It is the policy of SBA to aid, counsel, assist and protect small business concerns to which loans have been made. Ordinarily, the liquidation of the property securing a loan will not be resorted to if there appears to be any reasonable probability that the loan may be repaid by the borrower...within a reasonable period." ($96.00 a month for 10 years per agreement)

13 CFR 123.15(a)

> "The requirements of the Equal Credit Opportunity Act, 15 U.S.C. 1691 apply to all SBA loan recipients. See 12 CFR Part 220 and the Equal Credit Opportunity provision of SBA Form 1261 (OMB Approval No. 3245-0066)."

15 USC 636 (b)(3)

> necessary or appropriate to assist any small business concern in continuing in business at its existing location... if...such concern has suffered substantial economic injury as the result of its displacement by, or location in, adjacent to, or near, a federally aided urban renewal program or a highway project or any other construction constructed by or with funds provided in whole or in part by the Federal Government..."

5 USC 555(e)

> Prompt notice shall be given of the denial in whole or in part of written application, petition, or other request of an interested person made in connection with any agency proceeding... notice shall be accompanied by a brief statement of the grounds for denial.

15 USC 636 (b)

The Administration also is empowered--(1) to make such loans...as the Administration may determine to be necessary or appropriate to any small business concern located in an area affected by a disaster...if such disaster constitutes--(A) a major disaster, as determined by the President under sections 1855 to 1855g of Title 42....(i.e. ice storm in Janaury 1979)

the Administrator may consent to a suspension in the payment of principal and interest charges on, and to an extension in the maturity of, the Federal share of any loan ... for a period not to exceed five years, if (A) the borrower under such loan is a homeowner or a small business concern,...and the Administrator determine such action is necessary to avoid severe financial hardship

(c)(1) The Administration may further extend the maturity of or renew any loan made pursuant to this section, ...if such extension or renewal will aid in the orderly liquidation of such loan. (i.e. monthly payment by VA Compensation check for 10 years)

(i)(5) condicitions as the Administration shall determine, subject to the following limitations--(A) there is reasonable assurance of repayment of the loan; (B) the financial assistance is not otherwise available on reasonable terms from private sources or other

Federal, State, or local programs: (C) the amount of the loan, together with other funds available, is adequate to assure completion of the project or achievement of the purposes for which the loan is made; (i.e. to establish barber business of disabled Vietnam Veteran)

Illinois Revised Statutes Chapter 135 3.§ 3.

In all cases when a tender shall be made and full payment be offered, by discount or otherwise, as the party by contract or agreement ought to do, and the party to whom such tender shall be made doth refuse the same, and yet afterwards will sue for the debt or goods so tendered, the plaintiff shall not recover any costs in such suit. (i.e. SBA lists purchase of first mortgage as advance expense)

72 STAT 384

It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns...and to maintain and strengthen the overall economy of the Nation.

"(b) Further, it is the declared policy of the Congress that the Government should aid and assist victims of... other catastrophes. (i.e. Hwy 159 construction begun 1978, completed 1981)

STATEMENT OF THE CASE

Foreclosure complaint is filed June 23, 1980. District court assumes jurisdiction pursuant to 28 USC 1345. Defendants send answers to U. S. Attorney seeking judicial review claiming, inter alia, SBA sold direct loan and therefore SBA not party at interest. U.S. Attorney files for default and, after 3 delays, goes to trial without notice. November 29, 1982 a motion to set aside default and vacate sale is granted and U.S. Attorney is ordered to file those "answers". Order entered December 14, 1982. December 20, 1982 Petition For Leave to Intervene is filed by third party and on January 14, 1983 it is granted and motions for summary judgment by petitioners, inter alia, filed that very day January 14, 1983 are instanter denied in the same order, but court does not identify facts at issue. In order

4-28-83 court determines the fact at issue is question of default, although matter of default is committed by law to sole discretion of the agency and deferments may issue for entire period of deliquency. Petitioner Thomas L. Schuchman files for continuance citing 28 USC 2407 and reads affidavit filed in support into the record at hearing June 3, 1983; or at least he claims he did. District court shows no record of hearing June 3, 1983, at which oral motion to recuse pursuant to 28 USC 144 is also made. However, in its order entered June 13, 1983, it claims it was fully advised in the premises by all the parties. The record clearly indicates Lois C. Schau not present due to her health.

The record also contains letter dated January 27, 1983 by SBA Administrator William A. Krajec which denies all right, title and interest in and to the disputed

property. District court obfuscates interlocutory appeal on denial of mandatory injunction and proceeds to trial June 27, 1983. It denies formal pleading filed September 25, 1984. July 21, 1983 a pleading styled motion for mistrial and a new trial is filed. Conclusion number three (3) of this pleading seeks "judicial review". District court hears petition for judicial review September 2, 1983 and is again advised SBA not real party at interest and SBA Central Office is conducting review. District court takes motion under advisement. Petitioner Terry Lynn Schuchman files numerous memorandum in support to which U.S. Attorney makes no response. On May 4, 1984 a hearing on Motion to Compel USA to Answer is heard and pleading styled "Memorandum" by Petitioner Terry Lynn Schuchman is filed and heard. District court takes motions under advisement. Court Reporter Teri

Hopwood is present and does make record, but district obfuscates from 7th Circuit in record on appeal. Request for transcript of May 4, 1984 hearing is ignored by court reporter Teri Hopwood. June 5, 1984 district court enters order and petitioners file numerous post trial motions pursuant to Rule 60 (b)(3) Federal Rules of Civil Procedure, inter alia. Court denies all without hearing Petitioner Thomas L. Schuchman, who also does not present evidence or defense at trial because he is waiting for SBA review to be completed. On July 16, 1984 the third formal Petition to Recuse is filed. District court hears July 27, 1984 and denies, but allows all evidence presented. A pleading styled "Exhibits July 27, 1984" is file stamped and heard. It is in effect, Supplemental Petition for Judicial Review. Clerk later refuses to docket at court's direction . September 5, 1984 a motion

to compel district court to make written ruling is docketed but is never heard. District court orders clerk to remove from motion docket. b Later that same day, July 27, 1984 a notice of appeal is filed; Appellants Brief is filed September 19, 1984, but appeal is delayed by at least five (5) extensions of time requested by U.S. Attorney and its brief is not submitted to 7th Circuit until June 20, 1985. During delays, district court enters decree confirming U.S. Marshal's sale and sets hearing for Petition for Writ of Assistance with 2 days notice for March 8, 1985. Petitioner Terry Lynn Schuchman appears March 8, 1985 and refutes claim of USA by affidavit. District court does not issue order for writ of assistance. On March 15, 1985 Petitioner Terry Lynn Schuchman appears for Rule 60 (b)(3) motion set by her. No U.S. Attorney is present. District court refuses to make record but gentleman who is found to be Special Deputy U.S.

Marshal Robert Winkleman acts as attorney and argues for order directing clerk to issue Writ of Assistance which court does without making record as requested by petitioner Terry Lynn Schuchman. On March 18, 1985 petitioners fly to Chicago and file Petition for Writ of Prohibition 85-1431 in 7th Circuit and seek status of emergency motion in 84-2322 7th Circuit appeal on district court case 80-5143 filed March 11, 1985. Petition for Writ of Prohibition is denied and emergency motion in 84-2322 is found to be moot in 7th Circuit orders March 18, 1985. Handwritten motion for reconsideration in 85-1431 is attached to two (2) page motion declared moot in 84-2322 and instanter submitted in 85-1431. There is some question as to disposition and docketing thereof and on March 22, 1985 the day after U.S. Marshals execute writ of assistance, seizing personal possessions of Schuchman family and assaulting Petitioner Terry Lynn Schuchman, it is

also denied, being again moot. 7th Circuit is clearly erroneous in its Nov 6, 1985 order "Schuchmans sought no review in district court." and its case 85-2348 is really miscellaneous docket 85-8018, a petition for Writ of Mandamus submitted March 20, 1985 on which filing fee is tendered, seeking inter alia, district court to docket and rule on Petition for Judicial Review initally sought in July and August 1980 in response to complaint. SBA Central Office review, begun July 28, 1983 affirms petitioners claim that SBA Administrators Marjorie L. Casey, William A. Krajec, and D. I. Brookhart, et al sold direct loan and that SBA computer treated direct loan as on deferment for months of Nov 1979, Dec 1979, Jan 1980 and Feb 1980, inter alia, and district court makes prejudicial error in its assumption of jurisdiction. Justice Department directives prevent SBA inter-

vention on behalf of petitioners, instructing them to refer any inquiries to AUSA Clifford J. Proud in East St. Louis, U.S. Attorney's office.

REASONS FOR GRANTING THE WRIT

"Due process requires that the court which assumes to determine the rights of the parties shall have jurisdiciton." Twining v New Jersey 211 U.S. 78 at 110-111 (1908). District court makes an error in exercise of jurisdiciton, Sitton v U.S. C. A. Tex 1969, 413 F. 2d 1368, cert. denied, 90 S. Ct. 1118, 397 U.S. 988, 25 L. Ed. 2d 395, which, if left uncorrected, would be an affront to the integrity and reputation of judicial proceedings. U.S. v McCord, 166 U.S. App D. C. 1, 501 F. 2d 334, 341. Such a fundamental error will be considered on review and shall render judgment void. Defendants substantial rights are adversely

affected. They have been deprived of property, both real and personal, subjected to shame and public ridicule, suffered unlawful search and seizure, physical abuse and been subjected to cruel and unusual punishment by a substantially prejudiced district court that denied repeated requests to recuse and brought about a truly unjust result. Default is a matter committed solely to agency discretion. Deferments can issue for the entire period of deliquency. SBA Standard Operating Procedure Section 50 No. 50 Rev 3 page 61, Paragraph 51. a. inter alia. District court violated 14th Amendment and deprived defendants of due process of law by subjecting their property to the judgment of a court, the judge of which had a direct, personal, substantial interest in reaching a conclusion against them. Said interest being absolute, by its assuarance to third party intervenor that district court proceedings in first

foreclosure were good and valid and in full compliance of law. Tumey v. Ohion 273 U. S. 510 (1927), and in its failure to consider sua sponte ownership of direct loan L 7786851007 of Thomas L. Schuchman/DBA Colonial Barber Shop at trial. A determination of ownership is a conclusion of law based on underlying facts. 3 Nimmer, surpa §§ 13.01 (A). The right of ownership may be vested upon authority of statute i.e. 13 CFR 122.22. One of the fundamental precepts of Anglo-American jurisprudence is that a right, to be enforced in a court of law, must have a "holder" or "bearer". See R. Pound, Jurisprudence 192 (1959). There must be a "legal unit" to which the right attaches. Id. Illinois Revised Statutes Chapter 26 §§ 3-805 is clear. There is no holder in due course on a bearer document. SBA Administrator Marjorie L. Casey, et al does not have standing to make

legal claim for foreclosure nor does she have capacity to obtain judicial relief. See 13 C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure § 3531 (1984). Dean Pound explained:

> Capacity for rights must be distinguished from capacity for legal transactions (i.e., for acts intended to produce legal consequences to which the law, giving effect to the intention, attaches the intended consequence), capacity for wrongs (i.e. for acts involving civil liability for infringement of rights in rem), and capactiy for crimes (i.e. for breaches of absolute duties for which the law provides penal consequences). Want or loss of legal personality, therefore, is quite another thing from lack or loss of capactiy for legal transactions or for wrongs or for crimes or for all of them. A person may have legal rights (using rights in the broader sense) and yet be incapable of incurring legal liability, or incapable of responsibility for what would otherwise be accounted crimes.

IV R. Pound, Jurisprudence 276-77.

There are at least two compelling reasons why the court must deal with the issue of ownership of the direct loan sua sponte.

First, there is no question that the parties raised the issue of Plaintiff's ownership of the direct loan 4/ and capacity for ownership is an essential predicate to such ownership. SBA Administrator Marjorie L. Casey, et al has a claim only if ownership of the direct loan is vested with the SBA.

Second, standing and capacity are so fundamental to the effectiveness of the court's ultimate order that the court must consider these issues on its own motion.

4/ Court order 4-28-83 denying Motion to Make More Definate the Position of the Parties is included in separate appendix. See also two (2) docket page 11's and "Memorandum" filed May 4, 1984 which is in effect, a Rule 60(b)(3) Federal Rules of Civil Procedure motion given liberal construction pursuant to Rule 8(f) Federal Rules of Civil Procedure. Estelle v. Gamble, 429 U.S. 109, 97 S. Ct. 285(1976). Purely procedural matter of denomination of pleading would not be permitted to interfer with determination of substantive rights, and pleadings would be so construed as to do substantial justice. DeVito v. Hoffman, 1952, 199 F. 2d 468, 91 U.S. App. D. C. 263. See also in (cont)

It is in essence a consideration going to justifiability, which may be raised sua sponte. cf. Bergstrom v. Bergstrom, 623 F. 2d 517, 519 n. 1 (ith Cir 1980)(issue of ripeness may be raised sua sponte at any stage of the proceedings); Judice v. Vail, 430 U.S. 327 331-32 (1977)(issue of . standing raised sua sponte).

District court does not have jurisdiction to compel SBA officials to grant another loan to borrower after it has sold original direct loan. Simpkins v. Davidson, D. C. N.Y. 1969, 302 F. Supp 456 and SBA Administrators Marjorie L. Casey, William A. Krajec, and D. I. Brookhart, et al granting of guaranteed participation loan in SBA 327 loan action dated

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4/ (cont) separate appendix, pursuant to Supreme Court Rule 21.1(k), order 6-5-84 by district court, page 3 line 17 et seq "the memorandum filed ..." making reference to May 4, 1984 pleading, also included in separate appendix. June 22, 1984 district court holds hearing. July 27, 1984 supplemental Petition for Judicial Review is filed, styled "Exhibits July 27, 1984". District court later orders court clerk not to EOD.

July 21, 1983 is an act beyond the scope of agency authority without application by borrower, and is therefore subject to mandatory injunction Dubrow v. Small Business Administration, D.C. Cal 1972 345 Supp 4 as sought in pleading July 21, 1983, heard September 2, 1983 and filed formally in motion 9-25-84 which district court denies. There is no question petitioners Thomas L. Schuchman and Terry Lynn Schuchman sought judicial review on its substantative merits under the Administrative Procedure Act, 5 USC §§ 706 5/ The 8th Circuit has stated,

> "The conclusion we reach with respect to substantative review of agency

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5/ See page 3 Motion for Mistrial and A New Trial filed 7-21-83 conclusion number three (3) which states "judicial review" included in Separate Appendix pursuant to Supreme Court Rule 21.1(k). See also district order 6-5-84 which makes no reference to Motion Brief 7-21-83 which clearly identifies 5 USC 706 inter alia. and was heard and taken under advisement September 2, 1983.

> decisions is supported by the District of Columbia Circuit, by the Second Circuit and the Fourth Circuit, and by the analogous decision of the Supreme Court. Our conclusion is supported by scholarly opinion as well.
>
> The standard of review to be applied here and in other similar cases is set forth in Citizens to Preserve Overton Park v. Volpe, supra, 401 U.S. at 416, 91 S. Ct. at 824. The reviewing court must first determine whether the agency acted within the scope of its authority, and next whether the decision reached was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. In making the latter determination, the court must decide if the agency failed to consider all relevant factors in reaching its decision, or if the decision itself represented a clear error in judgment."

"A motion for summary judgment which reaches the merits of a mortgagor's affirmative defenses is frequently an appropriate mechanism for determining whether there is any substance to the mortgagor's claims." United States v. Winthrop Towers, 628 F. 2d 1028, 1036 (7th Cir. 1980). SBA's decision to

foreclose is subject to limited judicial review under 5 U.S.C. §§ 706 (2)(A). Winthrop Towers, supra, at 1036-1037, Judicial review is not unavailable.

The supreme Court succinctly stated, "No matter how rational or consistent with congressional intent a particular decision might be, the determination of eligibility cannot be made on an ad hoc basis by the dispenser of the funds." Morton v Ruiz, 415 U.S. 199, 232 (1974).

Reasons given by SBA in 2-14-80 order to accelerate the loan were " conclusory unsupported, and contradictory" and the decision was thus an abuse of discretion. Allison v. Block 556 F. Supp 400, 405 (W.D. Mo. 1982). 723 F 2d 631 8th Cir.

Schuchman met eligibility requirements for deferment and disaster loan and VA Check assignment showed reasonable re-payment ability and Schuchman did follow

requirements which SBA loan officer Marjorie L. Casey ignores and district court concedes "there may be some evidence in the record that would tend to support that claim."

SBA conduct was unconscionable, that is monstrously harsh and shocking to the conscience, based upon manner of collection of $8,000.00 direct loan and refusal of VA comp check, pursuant to 31 USC §§ 3711 et seq and §§ 3716(a) et seq in April 1980. 20/ Domus Realty Corp v 3440 Realty Co. 179 misc. 749 40 NYS 2d 69, 73; Hume v U.S. 10 S. Ct. 134, 132 U.S. 406, 33 L Ed 393 Edler v Frazier, 174 Iowa 46, 156 N.W. 182, 187; Hall vs Wingate, 159 GA. 630, 126 S. E. 796, 813, 2 Ves. 125; 4 Bouv. Inst. n 3848 and contrary to the mandate of the SBA " to aid, counsel, assist and protect small business" 72 STAT 384; See also 95 STAT 1056 at (e)(1); Ferrell vs Pierce, order entered 6-25-85, D.C. 73 C 334 N.D. of Ill. E.D.; Illinois Revised Statutes Chapter 110 Para: 16-111 Seeking Wrong Remedy Not Fatal states,

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20/ Footnotes are contained in separate Appendix pursuant to Supreme Court Rule 21.1 (k).

"the court shall permit the pleadings to be amended" and "the court shall grant the relief to which plaintiff or petitioner is entitled."
12-1001; 12-1005; 16-101 et seq; 15-309 Residence or Homestead Occupancy--which states, "the court may permit the owner to remain in occupancy."
13-217 Reversal or dismissal by U.S. District Court for lack of jurisdiction 22/ and 13-215 Fraudulent concealment of cause of action. 23/ 2-302(1)(2); 2-721; 2-210 of Illinois Revised Statutes Chapter 26, Uniform Commercial Code. 24/

That "Court will review for every error that has been asserted consistent with the liberal view given by the court of papers filed by pro se." Daily v Byrnes, C.A.A. (a, 1979) 605 F 2d 858 is cited at the end of 8 page STATEMENT OF ERRORS in Appellant's Main Brief filed 9-19-84 with 7th Circuit appeal 84-2322 but not considered

22. Id
23. Id
24. Id

because not in proper legal form. 24a/

There was no geniune issue of material fact on January 14, 1983 and the district court erred in not granting summary judgment on the issue of fraud as raised in "original answers" and amended pursuant to Foman v. Davis, 371 U.S. 178, 182 (1962): "Rule 15(a) declares that leave to amend 'shall be freely given when justice so requires'; this mandate is to be heeded." in pleading styled "Memorandum" filed May 4, 1984. See also Motion to Counterclaims and Damages filed March 21, 1984 and "Reiterative Answer" filed February 7, 1983.

> At the outset, it should be pointed out that fraud, as alleged here, is not truly a defense which will defeat the theory of recovery on which the plaintiff has sued, but rather, is in the nature of a counterclaim or setoff. This is so because the fraud alleged here is fraud in the inducement. It does not render the transaction void, but only voidable. Traditionally, a person so defrauded has recourse against the fraudulent party through either of two courses of action. He may rescind the transaction--tendering back what he has received and suing for what he

24a/ Id.

has parted with or he may rescind the transaction--tendering back what he has received and suing for what he has parted with--or he may affirm the transaction and maintain an action in deceit. McCormick, Damages § 121. "An action in trespass for deceit to recover damages for material misrepresentations inducing the making of a contract is founded on fraud or moral wrong, and is not based on the contract." 16 P.L.E. Fraud § 21 at 410. The Code, altough also making damages available in an action for rescission, UCC § 2-721, does not otherwise change the traditiona theory of election of remedies. In this case rescission is out of the question since the (SBA) has admitted that it sold the goods. Thus, fraud, as alleged here, is an independent action, the recovery for which may be set off against or may even exceed the amounts due and owing under the contract...

The error of the district court may be pinpointed from its refusal to consider the allegations of fraud ....In ruling on the motion (for summary judgment in an action based on a complex scheme of fraud), the court should not draw factual inferences, and should not resolve a genuine issue of credibility. 6 Moore's Federal Practice Para 56.17 at 22.5-2216.

This is the accepted rule in this ... circuit...This principle is particularly apt where intent is a substantive element of the cause of action because intent is generally to be inferred from the facts and conduct of the parties

Associated Hardware Supply Co. v. Big Wheel Distrib. Co. 355 F. 2d 114 U.S.C.A. 3rd Cir, 1965.

Even if SBA does not publish formal findings of fact and conclusions of law, it must clearly articulate the reasons for each decision in a manner susceptible to judicial review for an abuse of discretion. See City of West Chicago v United States Regulatory Commission 701, F. 2d 632 (7th Cir, 1983).

"SBA may choose to foreclose on a mortgage rather than give the mortgagor more time." is clearly an issue of continuing public interest, and is also taken out of context by 7th Circuit panel in its Nov 6, 1985 unpublished order. 13 CFR Ch 1: 122.23 (a) States: "It is the policy of SBA to aid, counsel, assist and protect small business concerns to which loans have been made. Ordinarily, the liquidation of the property securing a loan will not

be resorted to if there appears to be any reasonable probability that the loan may be repaid by the borrower...within a reasonal period."

Statement of facts in unpublished order Nov 6, 1985 by 7th Circuit is clearly erroneous and criticizes or questions existing law 28 USC 1292(a)(1). Interlocutory appeal from order denying mandatory injunction must be allowed. See Shubert v. Woodward, Mo. 1909, 167 F. 47, 92 C.C.A. 509. American Grain Separator Co. v Twin City Separator Co., Minn. 1912, 202, 120 C.C.A. 64 Higginson v. Chicago, B & O. R. Co. Neb. 1900 102 F. 197, 42 C.C.A. 254. Raylite Elec. Corp. v Noma Elec. Corp. C.A.N.Y. 1948, 170 F. 2d 914. If recission can be made because SBA has the right to bring it about --irregardless of the fraud practiced on SBA by third party in claiming warrenty deed and title to property is matter for SBA Administrative review. Kephart v. Wilson D.C. Tex. 1963 2191 F. Supp. 801, affirmed

350 F. 2d 669, certiorari denied 86 D. Ct. 548, 382 U.S. 977, 15 L. Ed. 2d 469. See 13 CFR Ch 1 122.15-3(c) for finality of review.

Appeal from order denying interlocutory injunction brings up the whole case as it is, and it may be considered and determined on its merits, so that the propriety of an order admitting a new plaintiff (third party intervenor) can be reviewed. Goldwyn Picture Corporation v. Howells Sales Co. C.C.A.N.Y. 1923, 287 F. 100, certiorari denied 43 S. Ct. 703, 262 U.S. 755, 67 L. Ed. 1217. See also Commercial Nat. Bank in Shreveport v. Parsons C.C.A. La 1944, F. 2d 191, certiorari denied 65 S. Ct. 440, 323 U.S. 796 89 L. Ed. 635.

That "the SBA was clearly authorized to declare Schuchman in default, accelerate the maturity of the note, and foreclose..." establishes a new or changes an existing ~~rule~~ of law. 15 USC 633 et seq. Allison v Block 556 F. Supp. 400, 405 W.D.Mo. 1982 723 F 2d 631 (8th Cir) 12-28-83. Pursuant to, inter alia, 42 USC 1983 and 1988; USCA Amend. 4,5,6,8 and 14 and 28 USC 2412 et seq, Equal Access to Justice Act and Illinois Constitution Article 1 Section 6, there was reckless, callous, and

and total disregard for the rights of borrowe

et al pursuant to 15 USC 631 et seq .

"trial judge may properly dismiss a suit, where he is satisfied from the evidence produced that the property involved as the subject matter of the action was collusively transferred to Plaintiff to enable a suit to be brought in the federal court and in fraud of its jurisdiction notwithstanding the fact that he had previousl overruled a motion to dismiss on that ground; and such dismissal may be made by the court of appeals on the same grounds."
Turnbull vs Ross, S. C. 1905, 141

F. 649, 72 C.C.A. 609.

"IF initiating party's assertion of federal jurisdiction is challenged by motion to dismiss, and he fails to bring forth any factual material to support his claim of jurisdiction, dismissal may properly be granted against him"

Green vs Hale, C. A. Tex 1970, 433,

F. 2d 324.

"Even where solicitation of plaintiff to bring suit and agreement to bear expenses are not part of transfer agreement with Plaintiff, dismissal may result where these factors are joined by finding that others interested in the outcome, rather than the plaintiff are in control of the conduct of the litigation."

Ferrara v. Philadelphia Laboratories,

Inc. D. C. Vt. 1967, 272 F. Supp 1000, affirmed 393 F. 2d 934. See also WRB Corp v Geer, C. A. Tex. 1963, 313 , F 2d 750 and Haverhill Gazette Co. v Union Leader Corp. CA. Mass. 1964, 333 F. 2d 798.

> Pursuant to the "clearly erroneous" rule judge cannot dismiss in silence a substantial portion of the evidence and judge was wrong to use standard of causation based on "sole or predominant cause" and a "more substantial cause of harm than any other known cause." Petitioners claim was founded upon and continued in, "unlawful conduct of a most substantial nature," i.e. Criminal Code 18 USCA Section 1001, whoever shall knowingly and willfully make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit or deposition knowing the same to contain any fraudulent or fictious statement or entry in any matter within the jurisdiction of any department or agency of the United States.....

United States v. Larry Wayne Rodgers, S.Ct. no. 83-620, argued 3-27-83, decided 4-30-84. is also cited.

Borrower letter 4-24-80 evidences " reasonable probability that loan may be

repaid by borrower...within a reasonable period." and declaratory judgment is sought in district court. Declaratory judgment on the issue of reasonable repayment within a reasonable period is a right of such fundamental importance as to require compliance with due process standards of fairness and justice which district court ignores in denial for judicial economy. 6/ Pinkerton v. Parr, W. Va. 220 S. E. 2d

> "The concept of "due process" of law" as it is embodied in Fifth Amendment demands that a law shall not be unresonable, arbitrary, or capricious and that the means selected shall have a reasonable and substantial relation to the object being sought. U.S. v. Smith, C.C. Iowa, 249 F. Supp. 515 516.....and to assert before the appropriate decision-making body ...Trinity Episcopal Corp. v. Romney, D.C.N.Y. 387 F. Supp. 1044, 1084.

Black's Law Dictionary, page 449, due process of law et seq. 13 CFR Ch 1 122.14 states:

> "Actions taken by SBA pursuant to the authority of section 7(c) of the SBA Act, as amended, are limited to such periods of time as appear necessary to avoid forced liquidation of loans."

13 CFR Ch 1 Section 122.8 states:

> "Direct Loans are those made by SBA to a borrower when no participation or guaranteed loan is available."

6/ See order 4-28-83 page 4 Line 15 et seq included in separate appendix pursuant to Supreme Court Rule 21.1 (k)

District court findings of fact and conclusions of law are clearly erroneous. Challenged findings of fact of the trial court, made as a part of a reasoned opinion can be upset if clearly erroneous. Armour & Co. v. Compania Argentina DeNavegarion Doders, S.A.C.A.N.Y. 1959 263 F. 2d 323

The challenged findings appear in transcript June 30, 1983 at page 6 line 7 thru line 16:

> "the SBA order to let them bring the payments current at one time required a payment of six hundred and some odd dollars. They offered to let them make their payments current and continue with the loan. They did not do that. It is difficult for me to believe as long as we're talking about equity and mercy, it is difficult for me to believe that they could not at that point have obtained the six hundred dollars and brought the loan current as any time prior to this date, recognizing that for whatever reason, the SBA did not want their business..."

For SBA to require loan to be made current is not a statutory remedy and if SBA did not want their business, for whatever reason, they should not have made the direct loan,

to later sell it to builder of mortgaged property, 13 CFR 122.22, ignoring success of business of borrower.

SBA collections procedure is violative of procedural due process of law. Terminating operating funds and seizing collateral 28/ in the absence of a hearing violates the Fifth Amendment to the U.S. Constitution.

On May 5, 1983 Judge Van Sickle entered a permanent injunction requiring FmHA(SBA) to conduct hearings in compliance with procedural due process of law denying an application for loan deferral or otherwise seeking to terminate, liquidate (SBA 2-14-80 acceleration and demand) or foreclose on outstanding FmHA (SBA) loans in Coleman vs Block No. A 1-83-47 (D.N. DAK Van Sickle, J.). 124 Cong. Rec. S-21999-22000 A. states:

> "Subsequent Congressional Statements support mandatory implementation of the deferral program with discretion vested solely in the ultimate decision to grant or deny deferrals on a case by case basis. Therefore, the conferees

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28/ Footnotes are contained in separate appendix pursuant to Supreme Court

(1980 Congressional Conference Report) will expect both the Farmers Home Administration and the Small Business Administration to provide procedures for meeting these problems, including refinancing, deferral of interest payments and even a moratorium of repayment in those individual cases where necessary and warranted to avoid bankruptcy or forced sale of assets. The economic recovery of the Nation depends on keeping people producing--not forcing them into bankruptcy.

See also p 121133 Congressional Record--Senate May 2, 1978. Allison v Block, 556 F. Supp 400, 405 W. D. Mo (1982) 723 F. 2d 631 (8th Cir) 12-28-83. SBA procedures become effective July 1, 1983 and district court refused to continue trial until review performed and ignores citing of mandatory injunction in Coleman v Block at June 3, 1983 hearing and shows no record.

District court is clearly erroneous, and admits, "there was no substantial evidence to support their (SBA) decision." 29/ SBA Administrator's case, if in fact SBA is owner of direct loan at trial, is frivolous at the very least, and should be remanded to the district court for dismissal for lack

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29/ Footnotes are contained in separate appendix pursuant to Supreme Court Rule 21.1(k).

of substantial evidence.

> "Proceeding in error on frivolous grounds perfected after long and unnecessary delay, will be promptly dismissed if called to the attention of the court by district attorney."

Alberts v U.S. C.C.A. Mich 1927 21 F. 2d 968

> "Where it appeared from record on appeal that no inquiry had been made by district court to determine extent of complexity of issues or time reasonably required for completion of discovery processes 32/ and that personality clashes had impaired communication between court and counsel, interests of justice required reassignment of case to another judge and remand for pretrial hearing for purpose of making such inquiry.

Freehill v. Lewis, C.A. Va 1966, 355 F. 2d 46. 33/ District court did not hold pretrial hearing that included pro se.

> Certiorari may issue to a court of appeals after final disposition of the case in that court, and it is immaterial that the mandate has already gone down.

The Conqueror, N.Y. 1897, 17 S. Ct. 510 166 U.S. 110 41 L Ed. 937 34/

31/Footnotes are contained in separate appendi pursuant to Supreme Court Rule 21.1(k).

32/ Id

33/ Id

34/ Id

AFFIDAVIT OF SERVICE

I, affiant, Terry Lynn Schuchman do solemnly affirm, that on this 26th day of April, 1986 I did hand deliver to the U.S. Postal Service 40 copies of this petition, and did tender the fee for registered mailing to the Clerk, U.S. Supreme Court, Joseph F. Spaniol, Jr., Washington D. C. 20543 and on this same day I mailed copies by certified mail, return receipt requested, to :

U.S. Marshal Donald R. Brookshire
Special Deputy Marshal Robert Woodard
Deputy Marshal Richard Woodard, et al
750 Missouri Ave. E. St. Louis, Ill. 62201

U.S. Solicitor General Charles Fried
Attorney General Edwin Meese, et al
Department of Justice, Washington D. C. 20530

U.S. Attorney Frederick J. Hess
AUSA Clifford J. Proud, et al
750 Missouri Ave. E. St. Louis, Ill. 62201

SBA Asst. Administrators William A. Krajec
Marjorie L. Casey, D.I. BROOKHART, et al
Four North Old State Capitol Plaza
Springfield, Ill. 62701

SBA Administrator James Sanders, ASST. Adm.
Earl Chambers, John E. Lagos, Charles R. Hertzberg
Patrick H. Stiehms, Eric Benderson, R.K. Andrews, etal
1441 L. St. N.W. Washington D. C. 20416

Stanley E. MOrris, Director, U.S. Marshals Service
ATTN: Gerald Auerbach, General Counsel, et al
One Tysons Corner Center, McLean, Virginia 22102

Terry Lynn Schuchman
46 Emerald Lane
Fairview Heights, Ill 62208

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MODIFICATION OR ADMINISTRATIVE ACTION

SBA FORM 327--Dated 4-15-80

JUSTIFICATION AND APPROVAL SIGNATURES

CAUSE FOR REPORT:

Authority to hire an appraiser.

COMMENTS:

Part of the collateral securing this loan is a second mortgage on borrowers residence. The balance of first is approximately 23,000.00 and is past due. A proposal has been received from Phillip Johnson to appraise this property for $125.00. This proposal is reasonable. Mr. Johnson has done prior work for SBA and is well qualified.

RECOMMENDATION:

It is recommended that Phillip Johnson be hired to appraise the real estate at 122 E. Shore Drive, Belleville, Illinois.

_____ (signed by Sue Leamo
Sue Leamons, Loan Servicing Assistant

COUNSEL COMMENTS:

(x-ed out and not signed

_____
William A. Krajec, Branch Counsel

ACTION: ABM: (word concur written)

_____ (signed by D.I. Brook
D.I. Brookhart, Assistant Branch Manager

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

January 14, 1983

Civ No. 80-5143

USA, SBA, ET AL

v.

SCHUCHMAN, ET AL

INTERLOCUTORY ORDER

Motions in the instant cause come on for hearing, all parties being present. The motion to intervene of Lynne Murphy heard and allowed. The motion of Lynne Murphy to set aside this court's order of December 14, 1982 heard and denied. The motions of Thomas Schuchman, Terry Lynn Schuchman and Lois Schau for summary judgment heard and denied, as factual issues remain. The motion of the United States for summary judgment, presented orally, is to be presented formally with supporting memorandum. The cause is ordered set for trial.

W. L. Beatty, Judge

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF ILLINOIS

September 5, 1984

USA, SBA, ET AL

v.

SCHUCHMAN, ET AL

MOTION TO COMPEL

Now comes pro se defendants Thomas L. Schuchman and Terry Lynn Schuchman and seeks to compel district court to reduce to printed form its ruling of July 27, 1984 at hearing for Motion filed July 16, 1984 timely made to Compel Disqualification of Judge Beatty with its reasons therefore.

Pro se attaches orders filed July 12, 1984 denying "Motion for Rehearing, Reconsideration, and to Vacate" and Motion to Compel written Ruling on Administrative Review Conducted" and cites Weaver vs U.S. 1968, 405 F. 2d, 353 131 U.S. App. D. C. 388: "The

failure of district judge to state in writing his reasons for denying motion required remand for statement of such reasons." and Beck v Federal Land Bank of Houston C.C.A. Mo. 1945 146 F. 2d 623, 57 Am Bankr, Rep. N.S. 274: "District Court must supplement its orders to extend of indicating if evidence had been taken on such issues."

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF ILLINOIS

JUNE 2, 1983

AFFIDAVIT

I affiant Thomas L. Schuchman, do solemnly affirm:

1. I have credits due me on the SBA promissory note which have been disallowed.
2. I did make request to General Accounting Office to have said credits allowed.
3. I do seek an injunction to restrain a breach of contract by SBA as a specific per-

formance of the contract.

4. I do tender VA Disability Compensation checks as monthly payments on SBA contract.

5. I have filed a motion for continuance pursuant to Title 28 USC § 2407.

6. In a meeting on December 20, 1982 with SBA officials in Springfield, Illinois I was asked what Mr. Gomric was doing with his case in St. Clair County Circuit Court.

FURTHER AFFIANT SAITH NOT.

Thomas L. Schuchma

Notary Public (signed Jerry J. Dinges)

Subscribed and sworn to me this 1st day of June 1983. My commission expires:

August 1984

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

85-1875

Supreme Court, U.S.
FILED
FEB 14 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

FEBRUARY TERM 1986

THOMAS L. SCHUCHMAN, ET UX PETITIONER,

v

UNITED STATES, SOLICITOR GENERAL CHARLES FRIED, JUSTICE DEPARTMENT, ATTORNEY GENERAL EDWIN MEESE, U.S. ATTORNEY FREDERICK J. HESS, AUSA CLIFFORD J. PROUD, U.S. MARSHALS SERVICE, DIRECTOR STANLEY E. MORRIS, U.S. MARSHAL DONALD R. BROOKSHIRE, DEPUTY MARSHAL ROBERT WINKLEMAN, DEPUTY MARSHAL RICHARD WOODARD, SMALL BUSINESS ADMINISTRATION, ADMINISTRATOR JAMES SANDERS, ASSISTANT ADMINISTRATORS, JOHN E. LAGOS, CHARLES R. HERTZBERG, EARL CHAMBERS, PATRICK H. STIEHMS, ERIC BENDERSON, WILLIAM A. KRAJEC, MARJORIE L. CASEY, W.K. ANDREWS, aka R.K. ANDREWS, aka ROBERT K. ANDREWS, DONALD I. BROOKHART, aka D. I. BROOKHART, ET AL UNKNOWN

RESPONDANTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

APPENDIX

Thomas L. Schuchman
46 Emerald Lane
Fairview Heights, Il.
62208
618-398-8091

Terry Lynn Schuchman
46 Emerald Lane
Fairview Heights, Il.
62208
618-398-8091

101 pp

A(

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

December 5, 1985

Before

Hon. JOHN L. COFFEY, Circuit Judge

Hon. FRANK H. EASTERBROOK, Circuit Judge

Hon. JESSE E. ESCHBACH, Senior Circuit Judge

UNITED STATES OF AMERICA, Plaintiff-Appellee, No. 84-2322 vs. THOMAS L. SCHUCHMAN and TERRY LYNN SCHUCHMAN, Defendants-Appellants.	Appeal from the United States District Court for the Southern District of Illinois, Alton Division. No. 80 C 5143 William L. Beatty, Judge.
THOMAS L. SCHUCHMAN and TERRY LYNN SCHUCHMAN, Petitioners, No. 85-2348 vs. UNITED STATES SMALL BUSINESS ADMINISTRATION, Respondent.	Petition for Review of an Order of the United States Small Business Administration.

O R D E R

On consideration of the petition for rehearing and suggestion for rehearing en banc filed in the above-entitled cause by defendants-appellants, no judge in active service has request a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

Appendix A

tition for Rehearing
bmitted November 9, 1985
hould read Petition For
ehearing with Suggestion
r Rehearing In Banc
seq.
Below is Suggestion
r Rehearing in Banc to
attached to 25 copies
Appellant's Main Brief
iled 9-19-84. There is
excuse for printing
me matter in supplemental
pendix on appeal if
terial is already in the appendix."
ewett v Aetna Cas. and Sur Co C.A. La. 1976 539 F 2d 496.
and distributed
r Federal Rules of Appellate Procedure Rule 35 [b]: The clerk shall
ansmit any such suggestion to the members of the panel and the judges of
e court who are in regular active service..."

25 copies @ $1.00 for docket copy after Suggestion is Entered. Thank you for EXPEDITING due to time

ORIGINAL

[redacted] Instructor filed this original inside original petition for rehearing en banc.

Gloria L. Schuchman 11/25/85

and send me a copy filed with FILE STAMP.

Terry Lynn Schuchman 11/25/85

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

No. 84-2322 vs.

THOMAS L. SCHUCHMAN and TERRY LYNN SCHUCHMAN,
Defendants-Appellants.

* * * *

THOMAS L. SCHUCHMAN and TERRY LYNN SCHUCHMAN,
Petitioners,

No. 85-2348 vs.

UNITED STATES SMALL BUSINESS ADMINISTRATION,
Respondent.

Appeal from the United States District Court for the Southern District of Illinois, Alton Division.
No. 80 C 5143
Judge William L. Beatty

* * * *

Petition for Review of an Order of the United States Small Business Administration.

1085

SUGGESTION FOR REHEARING IN BANC

THOMAS [redacted] CL

Comes now pro se citing Motion For Mistrial and A New Trial filed July 21 1983 contained in Short Appendix pages 6,7,8, of Appellant's Main Brief filed 9-19-84 and #9 on page 10 Short Appendix, and Motion to Compel to Answer page 14 and 15, Short Appendix of Appellant's Main Brief filed 9-19-84 and states:

The Supreme Court succinctly stated, "No matter how rational or consistent th congressional intent a particular decision might be, the determination eligibility cannot be made on an ad hoc basis by the dispenser of the funds." rton v Ruiz, 415 U.S. 199, 232 (1974).

Reasons given by SBA in 2-14-80 order to accelerate the loan were "conclusory supported, and contradictory" and the decision was thus an abuse of discretion llison v. Block 556 F. Supp 400, 405 (W.D. Mo. 1982). 723 F 2d 631 (8th Cir).

Schuchman met eligibility requirements for deferment and disaster loan d VA Check assignment showed reasonable repayment ability and Schuchman d follow administrative procedural requirements which SBA loan officer rjorie L. Casey ignores and district court concedes "there may be some idence in the record that would tend to support that claim."

Even if SBA does not publish formal findings of fact and conclusions law, it must clearly articulate the reasons for each decision in a manner sceptible to judicial review for an abuse of discretion. See City of West icago v United States Regulatory Commission 701, F. 2d 632, 648 (7th Cir 1983

"SBA may choose to foreclose on a mortgage rather than give the mortgagor re time." is clearly an issue of continuing public interest.

Statement of facts in unpublished order is clearly erroneous and criticizes questions existing law 28 USC 1292 (a)(1). Interlocutory appeal from order ying injunction must be allowed.

That "the SBA was clearly authorized to declare Schuchman in default, celerate the maturity of the note, and foreclose..." establishes a new or anges an existing rule of law. 15 USC 633 et seq. Allison v Block 556 F . pp. 400, 405, W.D. Mo 1982, 723 F 2d 631 (8th Cir) 12-28-83.

In absence of proper motion by pro se, CCA is requested, to guard against justice, to sua sponte make appropriate motion

o request a vote on pro se Suggestion For Rehearing in Banc.

cision by unpublished order Nov 6, 1985. Christoffel v U.S. 1951 190 F. 585, 88 U.S. App. D. C. 1 and Robinson v U.S.C.A. Mo. 1964, 333 F. 2d 322.

Terry Lynn Schuchman
Terry Lynn Schuchman

Respectfully submitted,
Terry Lynn Schuchman
46 Emerald Lane
Fairview Heights, Ill
618-398-8891 62208

PROOF OF SERVICE:

Copies to AUSA Clifford J. Proud
750 Missouri Ave.
E. St. Louis, Ill. 6220.

and

William A. Krajec, SBA Counsel
Four North Old State Capitol Plaza
Washington Building
Springfield, Illinois 62701

this 10th day of November 1985.

Terry Lynn Schuchman
11-10-85
Terry Lynn Schuchman

394

Appendix A-2

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

November 6, 1985.

Before

Hon. JESSE E. ESCHBACH, Circuit Judge

Hon. JOHN L. COFFEY, Circuit Judge

Hon. FRANK H. EASTERBROOK, Circuit Judge

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

No. 84-2322 vs.

THOMAS L. SCHUCHMAN and TERRY LYNN SCHUCHMAN,
Defendants-Appellants.

* * * *

THOMAS L. SCHUCHMAN and TERRY LYNN SCHUCHMAN,
Petitioners,

No. 85-2348 vs.

UNITED STATES SMALL BUSINESS ADMINISTRATION,
Respondent.

Appeal from the United States District Court for the Southern District of Illinois, Alton Division.
No. 80 C 5143
Judge William L. Beatty

* * * *

Petition for Review of an Order of the United States Small Business Administration.

This cause came before the Court for decision on the record from the United States District Court for the Southern District of Illinois, Alton Division, and the United States Small Business Administration.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District Court is AFFIRMED; and the petition for review of an order of the United States Small Business Administration is DISMISSED, with costs, in accordance with the order of this Court entered this date.

APPENDIX A

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

December 4, 19 85.

Before

Hon. JESSE E. ESCHBACH, Circuit Judge

Hon. _____

Hon. _____

UNITED STATES OF AMERICA, Plaintiff-Appellee, No. 84-2322 vs. THOMAS L. SCHUCHMAN and TERRY LYNN SCHUCHMAN, Defendants-Appellants. * * * * * THOMAS L. SCHUCHMAN and TERRY LYNN SCHUCHMAN, Petitioners, No. 85-2348 vs. UNITED STATES SMALL BUSINESS ADMINISTRATION, Respondent.	Appeal from the United States District Court for the Southern District of Illinois, Alton Division. No. 80 C 5143 Judge William L. Beatty * * * * Petition for Review of an Order of the United States Small Business Administration.

This matter comes before the court for its consideration upon the "AFFIDAVIT AND MOTION FOR FULL COURT RECONSIDERATION OF ORDER NOV 21, 1985 TO STAY THE MANDATE" filed herein on November 26, 1985, by Thomas L. and Terry Lynn Schuchman. On consideration thereof,

IT IS ORDERED that the request for "full court reconsideration" is hereby DENIED pursuant to Seventh Circuit Operating Procedure 1(a)(1).

Appendix A.

FOR THE SEVENTH CIRCUIT

A-5

USA, SBA, ET AL
RESPONDANTS, PLAINTIFFS,
APPELLEE

vs

SCHUCHMAN, ET AL

84-2322
85-2348

JOINT APPEAL AND PETITON FOR REVIEW SBA ORDER

AND

AFFIDAVIT ~~IN SUPPORT~~ MOTION FOR FULL COURT RECONSIDERATION OF ORDER NOV 21, 1985 TO STAY THE MANDATE, Christoffel v U.S. 1951 190 F. 2d, 585, 88 U.S. app. D. C. 1 and Robihson v U.S. C.A. No. 196 4, 333 F. 2d 322

I AFFIANT THOMAS L. SCHUCHMAN DO SOLEMNLY AFFIRM:

1. Reiterative answer by Thomas L. Schuchman presented for filing February 7, 1983. APPEARS IN RECORD TO CCA AS DOCUMENT # 43.

2. Original answers mailed to U.S. Attorney timely, (TRANSCRIPT 11-29-82 page 10, lines 17 et al.) has written across it in red ink "a judicial review is sought." or words to that effect.

3. Number 3 said REITERATIVE ANSWER filed 2-7-83 states, "SBA was argumentative and capricious..." clearly referring to 5 USC § 706 2(A) and reiterating letter 7-10-80 styled answer 80-5143(8-1-80).

4. Numbers 3, 9, 10, said REITERATIVE ANSWER refer to 5 USC § 706 2(B)(C) and (D), inter alia. as did orignal answers mailed to U.S. Attorney, in 1980.

5. I did not submit to the jurisdiction of the district court for any reason other than a ~~request for~~ judicial review of SBA order 2-14-80

6. The district courts refusal to perform a judicial review pursuant to 15 USC § 634 et seq, 5 USC § 701 et seq may be an abuse of discretion.

7. June 3, 1983 motion hearing clearly evidences judicial review is sought. My motion for continuvance indicates I am asking SBA to clearly articulate the statutory reasons for their decisions not to defer and not to grant disaster relief in a manner susceptible to judicial review for an abuse of discretion by SBA officials Marjorie L. Casey, William A. Krajec et al.

8. For that to occur district court must stay its hand until SBA review is performed and SBA central office (13 CFR Ch 1 122.15-3(c)) makes its determination. 13 CFR Ch 1 et seq clearly states any subsequent holder of SBA note is bound to same terms and conditions as SBA would be. MOTION FOR MISTRIAL AND A NEW TRIAL certified to CCA as Document # 128; and 7-21-83 MOTION BRIEF allowed by district court as attached to said and certified by district court as document # 132. I certify by my signature hereto that the copy attached is a true and authentic copy of the first page of said 7-21-83 MOTION BRIEF, and do hereby seek to stay the MANDATE on grounds that appeal has merit and pro se shall prevail on Writ of Cert. To do substantial justice I do seek CCA full court, or judge thereoff other than the Honoralbe Jesse E. Eschbaith to make appropraite motion pursuant to dates in caption above. I hereby request clerk to instanter file and submit to at least three active judges this motion and affidavit.

Thomas L Schuchman

Sondra L Wilkinson
NOTARY PUBLIC

Subscribed and sworn to before me this 25th day of Novemenber 1985. My commission expires:

SONDRA L. WILKINSON
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES SEPT. 9, 1986
ST. CLAIR COUNTY

PROOF OF SERVICE: COPIES TO ALL PARTIES.

Terry Lynn Schuch 11/25/85

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
vs.	)	CIVIL NO. 80-5143
Thomas L. Schuchman,	)	
Defendants,	)	

7-21-83 Motion Brief

Attached are documents refered to in Motion for Mistrial and a New Trial.

6-9-78 deferment letter

10-11-78 letter & phone memo

2 page financial schedule

10-20-78 Chicago report

4-3-79 letter

Verbal Dun & Bradstreet

Equifax Credit Report

4-4-79 letter

10-8-79 letter

12-14-82 Court Order

Duplicate 8-1-80 answer

7-25-79 letter

6-23-79 deferment request

Colonial Barber Shop note from SBA file

SBA Form 327 dated 7-25-79

159 Highway Certification

6-14-82 letter

10-4-82 letter

12-6-82 letter

12-21-82 Letter

12-23-82 letter

1-27-83 letter

2-18-83 letter

8-11-83 letter

Below is a listing of statutes cited.

5 USC Sections 701-706 Inclusive

5 USC Section 555(e)

5 USC Section 554 (d) (1); (e)

5 USC Section 556 (c) (6); (d); (e)

Public Law 89-773

Public Law 91-606 Section 226 (b); 231(1)(B);(2); 234; 236 (b); 237(b); 304

42 USC Section 4451

15 USC Section 636 (a); (b)

15 USC Section 634 (b)

Section 5(e)(1) 2 of Small Business Act

Public Law 95-89 Section 303

Appendix A-2

A-7

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

U.S.C.A. - 7th Circuit
RECEIVED
JAN 1985
THOMAS F. GIBBONS

January 30, 1985

Before

Hon. WILLIAM J. BAUER, Circuit Judge

Hon. RICHARD D. CUDAHY, Circuit Judge

Hon. JESSE E. ESCHBACH, Circuit Judge

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

No. 84-2322 vs.

THOMAS L. SCHUCHMAN and TERRY LYNN SCHUCHMAN,
Defendants-Appellants.

Appeal from the United States District Court for the Southern District of Illinois, Alton Division.
No. 80 C 5143
Judge William L. Beatty

This matter comes before the court for its consideration upon the "REQUEST FOR DISMISSAL FOR LACK OF JURISDICTION WITH MEMORANDUM" and brief in support of, filed herein on December 21, 1984, by pro se defendants-appellants.

Appellants have filed a motion to dismiss directed toward questioning the jurisdiction of the lower court to enter a judgment against them. Such a contention is not properly addressed in a motion to dismiss and is more appropriately addressed in appellants' briefs on the merits. Accordingly,

IT IS ORDERED that said motion is DENIED and appellants are instructed to raise the issues contained therein in their briefs on the merits.

APPENDIX J

U. S. COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

USA, SBA, ET AL PLAINTIFF RESPONDANT, APPELLEE vs SCHUCHMAN, ET AL DEFENDANT, PETITIONER, APPELLANT	JOINT PETITION FOR REVIEW OF SBA ORDER AND APPEAL FROM SOUTHERN DISTRICT

MOTION TO SUPPLEMENT THE RECORD ON PETITION FOR REHEARING, CCA TO SUA SPONTE MAKE APPROPRIATE MOTION, SEE FOOTNOTE 2 PAGE 4 NOV 6, 1985 CCA UNPUBLISHED ORDER, MEMORANDUM IN SUPPORT

Comes now pro se and seeks to supplement the record on Petition for Rehearing and attaches relevant motions filed in 82-LM-1278, a state court action, and a copy of page 449 Black's Law Dictionary signed by Thomas L. Schuchman, all cites contained therein due process clause et seq, and further cites footnote 2 page 4 Nov 6, 1985 CCA unpublished order, Robinson v U.S. C.A. Mo. 1964, 333 F. 2d 322, Christoffel v U.S. 1951, 190 F. 2d 585, 88 U.S. App. D. C. 1. State action 82-LM-1278 file does contain copy of 5 USC §§ 706 et seq.

MEMORANDUM

1. District court allows third party intervenor (D.C. DOC. #37) who claims to be recipient of a warrenty deed. (D.C. DOC. #30).

2. Request to cite Plaintiff and third party intervenor et al for contempt (D.C. DOC. #109) is ordered without merit and is therefore denied (D.C. DOC. # 113). Interlocurtory appeal pursuant to 28 USC 1292(a)(1) (D.C. DOC.#125, CCA correspondance file letter 7-11-83) is ignored.

3. Request to cite (D.C. DOC. # 109) is restyled and filed 4-5-84 in state action 82-LM-1278 with SBA Loan Action #17 dated 7-21-83 attached. Said attached hereto and incorporated herein along with motion to remove inter alia filed 11-27-85 in 82-LM-1278 by mention.

4. SBA loan action #17 dated 7-21-83 reinstates loan 7786851007, an action that is required before SBA can act on request made 7-10-80 (D.C. DOC. #21; #22; inter alia. See also transcript 11-29-82 page 18 lines 9 thru 12.) pursuant to Illinois Revised Statutes Chapter 95 57. §§7. (D.C. DOC. #68). Copy Illinoi-s Revised Statutes Ch 95 23.6-2§§7.2; 57. §§7. attached hereto and incorporated herein by mention.

5. SBA review begun 7-28-83 (D.C. DOC. #149, #166, #173) finds in favor of pro se Thomas L. Schuchman. As appears of record SBA officials Marjorie L. Casey, William A. Krajec and D.I. Brookhart abused their discretion as did Alton district court in proceeding to trial (D.C. DOC. #33, #34, #35 #36, #37, #68, #102, #110, #113, #119) and in failing to perform review/ judicial review as originally requestex. (Transcript 11-29-82 page 10 and page 18 lines 9 thru 12) inter alia. *Suggestion For Rehearing In Banc attached hereto and incorporated herein by mention.

Mary Beth DeFee
NOTARY PUBLIC

Subscribed and sworn to before me this 29 day of November, 1985.

My commision expires: April 12, 1988

Terry Lynn Schuchman

Terry Lynn Schuchman
46 Emerald Lane
Fairview Heights, Illinois 62208
618-398-8091

PROOF OF SERVICE: COPIES TO ALL PARTIES 11-29-85. tls

L-4

Appendix B page 5

A-9

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted October 22, 1985*

[illegible] ORDER
[illegible]
[illegible] CIRCUIT RULE 53

November 6, 1985.

Before

Hon. JESSE E. ESCHBACH, Circuit Judge

Hon. JOHN L. COFFEY, Circuit Judge

Hon. FRANK H. EASTERBROOK, Circuit Judge

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

No. 84-2322

vs.

THOMAS L. SCHUCHMAN and
TERRY LYNN SCHUCHMAN,
Defendants-Appellants.

THOMAS L. SCHUCHMAN and TERRY LYNN SCHUCHMAN,
Petitioners,

No. 85-2348

UNITED STATES SMALL BUSINESS ADMINISTRATION,
Respondent.

Appeal from the United States District Court for the Southern District of Illinois, Alton Division.

No. 80 C 5143
William L. Beatty, Judge.

Petition for Review of an Order of the United States Small Business Administration.

---

* After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a "Statement as to Need of Oral Argument." See Rule 34(a), Fed. R. App. P.; Circuit Rule 14(f). On September 19, 1984 Defendants-Appellants, Thomas and Terry Schuchman, filed a request to waive oral argument. On August 6, 1985, Defendants-Appellants filed a "Statement as to Need for Oral Argument with Motion to Make Certain Unanimous Three Judge Panel." Upon consideration of these statements, the briefs, and the record, the appeal is submitted on the briefs and record.

O R D E R

There is no question but that the SBA must insist upon prompt payment of due installments on its loans, see 13 C.F.R. § 122.21, and, if a borrower is in default on one or more installments, the SBA may choose to foreclose on a mortgage rather than give the mortgagor more time. See 13 C.F.R. §§ 122.23-.24. Contrary to the Schuchmans' assertion, the record clearly establishes that the SBA loan was in default and that there was no deferment in effect to prevent the default.

The first payment on the Schuchman loan was due on November 20, 1977 (and the 20th day of each month thereafter) but made on December 6, 1977. Schuchman paid the next four monthly installments on December 19, 1977; January 27, March 13, and April 6, 1978. Schuchman failed to make the April and May payments, but on June 8, 1978 the SBA granted Schuchman a six-month deferment (for installments due April 20 through September 20, 1978). Schuchman made six additional payments on his loan--November 1 and November 24, 1978; February 12, March 14, April 11, and July 10, 1979--which the SBA applied to the installments due October 1978 through March 1979. In June 1979 Schuchman requested another six-month deferment. The SBA again approved the request (upon a recommendation that Schuchman be given "one last chance") but mistakenly granted only a four-month deferment. When discovered, the SBA remedied the problem and added two months to the second deferment. Consequently, the SBA deferred payments on Schuchman's loan for the period April through September 1979. Payments were to resume again on October 20, 1979. However, Schuchman made no further installments, and the SBA granted no additional deferments. The Schuchmans' contention that there was an additional deferment that would have prevented the note and mortgage from being in default is without merit. The district court conceded that "[t]here may be some evidence in the record that would tend to support that claim," but found the evidence "not convincing, not persuasive." The district court's finding is not clearly erroneous and accordingly will not be set aside. DePass v. United States, 721 F.2d 203, 205 (7th Cir. 1983). Schuchman contracted to pay monthly installments on his SBA loan, and the SBA's insistence upon prompt payment of the installments when due was proper. Moreover, the SBA was clearly authorized to declare Schuchman in default, accelerate the maturity of the note, and foreclose on the second mortgage where it held both first and second mortgages. United States v. Olsen, 515 F.2d 1269, 1271 (1st Cir. 1975). Indeed, the SBA's actions were consistent with its obligation to insure the integrity and viability of its loan program. See United States v. Wallace & Wallace Fuel Oil Co., Inc., 540 F. Supp. 419, 431 (S.D. N.Y. 1982).

The Schuchmans further contend that SBA decisions regarding the loan were not proper. They argue that decisions not to grant a third deferral, provide other financial or managerial assistance, or accept VA checks as direct payment on the loan,

and many other administrative decisions were wrong and violated their right to due process under the law. The SBA must make many decisions in the course of administering its loan programs which are by their very nature committed to agency discretion and expertise. See e.g., 13 C.F.R. § 131.3(a) (loan deferments); see generally 15 U.S.C. § 634(b). Where, as here, the decisions of the agency involve discretionary managerial and business rather than legal judgments, such decisions are unreviewable. See Gifford v. Small Business Administration, 626 F.2d 85, 86 (9th Cir. 1980) (SBA's determination of whether to provide managerial counseling and aid is clearly committed to agency discretion and nonreviewable); see also United States v. OCCI Co., 758 F.2d 1160, 1167 (7th Cir. 1985) (HUD managerial and business judgments made during course of administering loans not relevant to foreclosure action) (Posner, J., concurring).

Finally, the Schuchmans seek review of "the order of the U. S. Small Business Administration authorizing demand letter entered on February 14, 1980."[1] In essence, the Schuchmans ask that we review the SBA's initial decision to declare the loan in default and accelerate payment. Section 634(b)(1) of Title 15, United States Code, permits the Administrator of the SBA to sue and be sued and confers jurisdiction on the federal district courts to hear such suits. Expedient Services, Inc. v. Weaver, 614 F.2d 56, 57 (5th Cir. 1980); see also Johnson v. Citizens Bank & Trust Co., 659 F.2d 865, 870 (8th Cir. 1981).[2] The Schuchmans sought no review in the district court. Rather, they filed the instant petition as an original action in this court on August 6, 1985. As such, this Court is without jurisdiction to entertain the petition. See Noland v. United States Civil Service Commission, 544 F.2d 333, 334 (8th Cir. 1976) (per curiam) (court of appeals has no jurisdiction to review administrative order under Administrative Procedure Act unless expressly authorized by separate statutory grant of power); School Board of Broward County v. Department of Health, Education and Welfare, 475 F.2d 1117, 1119 (5th Cir. 1973) (same); Arizona State Department of Public Welfare v. Department of Health, Education and Welfare, 449 F.2d 456, 464 (9th Cir. 1971) (same), cert. denied, 405 U.S. 919 (1972).

---

[1] This request was filed as a separate appeal (No. 85-2348) and consolidated with the instant appeal (No. 84-2322) for decision.

[2] Jurisdiction is also granted to state courts having general jurisdiction. 15 U.S.C. § 634(b)(1). See, e.g., Carter v. Small Business Administration, 573 P.2d 564, 40 Colo. App. 271 (1977), cert. denied, 104 S. Ct. 711 (1984).

Appendix A

Compare 28 U.S.C. § 2342.[3] Accordingly, we dismiss appeal No. 85-2348.[4]

AFFIRMED IN PART;
DISMISSED IN PART.

---

[3] The Schuchmans allege jurisdiction under the Administrative Procedure Act, 5 U.S.C. § 701 et seq., but it is clear that this Act does not provide an independent grant of jurisdiction. Califano v. Sanders, 430 U.S. 99, 107 (1977).

[4] Since the submission of their Reply Brief, the Schuchmans have filed a series of motions. In an order dated August 19, 1985, two such motions were to be considered along with the merits of the appeal, i.e., "Motion to Allow Correction of Ommissions [sic] and Misstatements" and "Motion to Allow Composition of the Record as Follows." Upon consideration of both motions, each is hereby denied.

On September 26, 1985, appellant filed an "Emergency Petition for Injunction to Enjoin SBA from Selling by Quit Claim Deed and Title Policy Mortgaged Property 122 East Shore Drive, Subject Matter of this Case." Our decision today makes the relief requested moot.

On October 7, 1985, appellant filed a "Motion to Make Certain: No Excusable Neglect in 85-1431; Law Clerk on Docket 84-2322 who Withdrew Record, 1 env. loose pldgs, 3/29/5, Contents of Said 1 env. loose pldgs; AND/OR to Supplement the Record; memorandum in support." To the extent that the motion requests action with respect to case 85-1431, we remind appellant that this docket number has been closed since March 22, 1985. Accordingly, this Court will entertain no motion with respect to Case No. 85-1431. To the extent that the motion seeks to supplement the record in consolidated cases 84-2322 and 85-2348 due to the withdrawal of an envelope of pleadings by a law clerk, such request is denied as unnecessary.

On October 8, 1985, appellant filed with this Court a "Motion to the Full Court Compeling [sic] Clerk to Instanter File and Mail Any Order Coming Down in Pro Se Cases 84-2322, 85-2348, and 85-1431 to the Correct Address 46 Emerald Lane, Fairview Heights, IL. 52208 or be Held in Contempt for Failure to Comply and Thereby Delaying Pro Se, Affidavit in Support: and/or for Court to Review Motions, and Orders Denying, Reconsiderations Filed September 6, 1985 and September 16, 1985 and so Delayed by Clerk's Mailing Together September 30, 1985 to Incorrect Address 122 East Shore Drive Belleville, Illinois 62221; and/or to Correct Typographical Error in Number 9 of

(footnote continued)

Appendix A

4 (cont.) Pro Se Motion to Make Certain: Mailed October 4, 1985 from April 14, 1985 to April 12, 1985, Copy Appearance Docket 85-1431 Attached Hereto in Support: and/or to Compel Clerk to Locate and File in 85-1431 and 84-2322 52-page 'Motion to Judge Coffey for an Order of Mandamus Compelling Clerk to Perform its Duty and File: Petition for Review and Serve a Copy of Notice of Filing of Said Petition for Consideration Three Judge Panel Et Seq, Request to Interlocutory Appeal and Correct the Record with Memorandum and Others' Made and Mailed March 20, 1985 With Affidavit in Support: and/or to Supplemment the Record." To the extent that this motion requests the Court to ascertain movant's correct address, such request is granted, the Court having ascertained that movant's correct address is on all records associated with the consolidated cases. To the extent that the motion requests further review of the Court's dispositions of previous motions filed herein, such relief is denied. All further relief sought is hereby denied as moot, as a copy of the Petition for Review has been duly filed with this court.

Appendix A

would have prevented the mortgage from being in default. There may be some evidence in the record that would tend to support that claim, but that evidence is certainly not convincing, not persuasive, and to the contrary, the plaintiff's evidence demonstrates quite clearly and the Court finds that there was no third deferral which the defendant contends, that there were deferrals for six months in '78 and six months in '79, but there were not sufficient deferrals to prevent the loan from going into default.

I think at this point it is good to note that you almost have to read this record word by word to separate the real evidence from unsupported, unverified statements made by Mrs. Schuchman, which were in no way supported by any evidence, but taking the evidence and only the evidence, the Court finds that there was no deferral, for the second six-month period as she contends, and the loan was, therefore, in default.

The defendants contend that the plaintiff failed to give them management assistance and failed to accord the defendant, Thomas Schuchman, certain benefits that he is entitled to because of the fact that he is a Vietnam veteran. There is no evidence to support that suggestion.

The defendant contends that they did not receive payment cards and could not therefore make their payments. Even if that were true, there is no evidence to show that that would in any way excuse the payments being made. The word negligence

has been used throughout this trial, but this is not a negligence case and I have been pointed to no law that would show that negligence on the part of the SBA would excuse the prompt and timely payments on the mortgage and the note.

In effect, what we have in this case, and in large part, is the defense that the administrative determinations by the SBA were not proper. Their administrative decisions not to grant the third deferral, their administrative decision not to make a disaster assistance loan, or emergency loan or whatever other loan or disaster assistance, their administrative decision not to accept the VA checks as direct payment on the loan and many other decisions that they made, they are contending that these decisions were wrong. It is not for this Court to make a de novo determination that those decisions were right or wrong.

If I am to overturn those decisions, or to say that those decisions are wrong, the burden is on the defendant to show that the administrative agency acted arbitrarily or capriciously or perhaps that there was no substantial evidence to support their decision. In some way they must overturn those administrative decisions. The burden is not upon the plaintiff to show that the decisions were right.

In her closing argument, Mrs. Schuchman showed for the first time, I believe, some understanding and insight into the real issues and the real problems that have brought about

this situation. She appealed strongly to the Court's emotion and in essence threw herself and her family on the mercy of the Court. It is difficult for the Court to disregard everything that has happened in this case before and after the refusal to make the payments, but I feel that I must.

I point out that on at least one and probably several occasions early in this matter, the SBA order to let them bring the payments current at one time required a payment of six hundred and some odd dollars. They offered to let them make their payments current and continue with the loan. They did not do that. It is difficult for me to believe as long as we're talking about equity and mercy, it is difficult for me to believe that they could not at that point have obtained the six hundred dollars and brought the loan current as any time prior to this date, recognizing that for whatever reason, the SBA did not want their business, they could have sold the house, paid up the mortgage, or else they could have refinanced the house, secured new financing and paid off the SBA mortgage and although this situation that the defendants find themselves in at this point is a situation of their own making, I recognize the financial difficulties that they must have had in trying to start a new business. But I think they have had every possible consideration.

I take note that the Government could have early in this case, asked for a trustee, could have required the payment of

rent, any number of steps the Government could have taken during the pendency of this litigation which they did not take. In the final analysis, it is obvious that these people have been living in this house and have not paid a dime rent or anything else since July 10th, 1979.

MRS. SHAW: They have been paying it to me, sir.

THE COURT: That is approximately four years that they have lived in the place without making any payment on either the first mortgage that was purchased by the Government, or the second mortgage which the Government made.

Mr. Proud, I am going to ask you to prepare a suggested decree and order directing the sale of the mortgaged property and submit it to the Court for approval.

MR. PROUD: I assume, Your Honor, that you want me to run the figures current to today's date?

THE COURT: We have the figures, bring the figures current, and of course, you have outlined the priorities which are correct. The sixteen hundred dollars advance payment, of course, is junior to Mrs. Shaw's mortgage.

Now, we of course, don't know what her mortgage is, but it certainly is junior to the Government's mortgage and the First Federal's mortgage. Since the initial order, the file reflects that some of the other indebtedness which was considered in the original decree have been either paid or withdrawn and you will have to reflect that in your order and send

A-19

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA"
FOR THE SOUTHERN DISTRICT OF ILLINOIS

FILED
JUL 21 1983
A. MARVIN HELART
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINC
EAST ST. LOUIS OFFICE

UNITED STATES OF AMERICA,

Plaintiff,

vs. CIVIL NO 80-5143

Thomas L. Schuchman,

Defendant,

MOTION FOR MISTRIAL AND A NEW TRIAL

Now comes pro se defendant Terry Lynn Schuchman and asks for the finding of a mistrial and granting of a new trial on the proceedings begun June 27, 1983 and concluding on June 30, 1983 and states:

1. This Court lacks jurisdiction pursuant to Title 5 USC Section 706 Subsection (1), (2)(A), (2)(B),2(C), (2)(D), (2)(E), (2)(F). Motion is made pursuant to Rule 59 Federal Rules of Civil Procedure.

2. The prejudicial error which caused the order and decree of this Court issued February 23, 1982 to be set aside and vacated denied defendants right to a speedy trial.

3. Prejudicial error did affect the final results of the de nova trial. Actual prejudice to defendants ability to present an effective defense was evident in Court's conduct at de nova trial.

4. The reviewing Court shall, pursuant to Title 5 USC Section 706 Subsection (1), compel agency action unlawfully withheld or unreasonably delayed.

5. Pleading filed July 11, 1980 did present defendants right to an administrative review and did show a request for said appeal timely made.

6. Testimony by Marjorey Casey did show failure to consider and admitted lack of written response to defendants requests for administrative review and appeal at that time. 5 USC 555(e)

7. SBA official Marjorey Casey did fail to observe procedure required and admits

L-2 page 1

-X- Appendix ~~page 2~~

said failure to respond in writing to said requests in testimony under oath.

8. Said failure was an abuse of discretion that was arbitrary and capricious and not in accordance with statute. SBA official Marjorey Casey did state in sworn testimony that her decision was a "judgment call". 15 USC 636(b)

9. SBA procedure requires a written response and is not subject to a "Judgment call".

10. Defendants did request an administrative review again on June 14, 1982, October 4, 1982 and December 23, 1982 at the appropriate levels. No written response was received from the regional or Washington level.

11. Springfield SBA response claimed length of time elapsed prevented them from taking action.

12. Length of time elapsed was due not to fault of defendants but to prejudicial error.

13. Court failed to take prejudicial error into account and blamed defendants for delay.

14. The defendants entitlement to administrative review was prejudiced as a result of the conduct, misrepresentation and silence of the PLaintiff.

15. Conduct of plaintiff which has placed defendant in a situation where his rights will be imperiled and his defenses embarrassed is a basis of laches. Knowledge, unreasonable delay and change of position are all evident.

16. Court has refused to issue a stay Pursuant to Title 5 USC Section 705 due to length of time elapsed in case. Length of time elapsed was due to willful non-prosecution by Plaintiff and prejudicial error.

17. Case was set for trial at least 3 times and delayed at least 3 times by Plaintiff with no written justification appearing of record.

18. Fact that trial was de nova evidences defendants right to judicial review pursuant to Title 5 USC Section 706 Subsection (2)(F).

19. Court wrongfully refused to review administrative action unlawfully

20. Court did not take due account of the rule of prejudicial error.

21. Rule of prejudicial error was basis for pleading styled "Objections to Complaint". Court ordered said liberally construed as "answers" and refused to hear objections based on pleading involved in the predjudicial error.

WHEREFORE, pro se defendant Terry Lynn Schuchman prays:

1. For the declaration of a mistrial.
2. An administrative review at all SBA levels as is right by law.
3. Judicial review and new trial if warranted after administrative review.
4. Leave to present new evidence developed with regard to collusion.
5. Other relief.

Terry Lynn Schuchman

Terry Lynn Schuchman
pro se defendant
122 East Shore Drive
Belleville, Illinois
618-277-4089

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Appendix

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF ILLINOIS

FILED

JUN 5 1984

A. MARVIN HELART
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
ALTON OFFICE

UNITED STATES OF AMERICA,]
]
Plaintiff,]
]
-vs-] No. 80 5143
]
THOMAS L. SCHUCHMAN, ET AL]
]
Defendant.]

ORDER

This matter was tried to the Court with judgment for plaintiff after a three day trial. The court is uncertain how to detail the obfuscated history of this litigation. Defendants herein have proceeded pro se, although apparently Terry Lynn Schuchman has done all of the paper work and arguments for the family members who are defendants. In an effort to permit defendants to place before the court all potentially relevant material, this court allowed Mrs. Schuchman to present voluminous materials which were not properly admissible and to present irrelevant arguments. After all defendants' material was presented, the evidence that plaintiff was entitled to judgment was overwhelming.

A brief history of this case reveals that proceedings herein nave not run a smooth course. Defendant, Schuchman, in order to operate a barber shop, executed a note in 1977 to the S.B.A. secured by a mortgage on the home of Thomas and Terry Lynn Schuchman. The S.B.A., after a long involved series of transactions, was assigned a mortgage, note and claim held by

APPENDIX L-1

Appendix I

Mascoutah Savings and Loan Association (now First Federal Savings and Loan Association of Mascoutah) on the home of the Schuchmans. Mrs. Schuchman's mother, Lois Schau, has a mortgage recorded against the subject property on October 20, 1978. Eventually, for failure to make the payments on the barber shop loan, the S.B.A. instituted foreclosure proceedings and the home property was sold at a judicial sale. A series of errors then became apparent. On December 14, 1982, this court set aside and vacated the decree and order directing sale of the mortgaged property entered February 23, 1982, the U.S. Marshal's sale of April 20, 1982 and the U.S. Marshal's deed issued October 20, 1982. This was done after it was shown that plaintiff had published the notice of Marshal's Sale only three times, not four as required by law, and that defendants had filed "Answers" to the complaint, but only with the U.S. Attorney's Office which letters constituting "answers" were merely placed in the government file.

A bench trial was then had where defendants, appearing pro se, entered a great deal of material into the record and explained the materials at length. Judgment in favor of plaintiff was entered on July 12, 1983. Sale of the property did not proceed immediately, however, because, as evidenced by a letter dated July 28, 1983 from Edwin T. Holloway, a review of the complete loan file of the Colonial Barber Shop was to be conducted by staff officials from the Administrator for Finance and Investment and the Office of General Counsel. With hope that the entire situation could somehow be resolved, matters awaited the outcome of the review of the file.

In the meantime, Mrs. Schuchman has continued to file materials with this court. It is difficult to be certain we are not overlooking something that could be liberally construed as having merit. We believe the papers filed fall into two general categories. The first group can be considered as counterclaims, while the second may be taken as motions to alter or amend the judgment and for a new trial. We will address first what we are construing to be counterclaims. Mrs. Schuchman urges that portions of the letter which was taken to be an answer to the complaint were sufficient notice so that counterclaims filed after judgment could be said to relate back. Even construing those letters as Mrs. Schuchman urged us to, we doubt that there was any counterclaim of which plaintiff had notice. The material filed after the judgment was entered and titled Counterclaims consists of 208 numbered paragraphs citing many laws and documents and setting forth wide ranging legal conclusions. In the memorandum filed in support of the counterclaims, defendants allege an incredible array of legal defenses and theories: accord and satisfaction, contributory negligence, duress, failure of consideration, fraud, estoppel, libel, violation of Fair Credit Reporting act, violation of Economic Opportunity Act, breach of contract, invasion of privacy and failure to join necessary parties. This court believes this portion of defendants' pleadings are appropriate for dismissal pursuant to Rule 8 F.R. Civ. Pro. As the court stated in Rechsteiner v. Madison Fund, Inc., 75 F.R.D. 499 (D.C. 1977), "yet despite the liberality envisioned by the rule, even a pro se complaint is subject to

Appendix L-1

dismissal if the pleading fails reasonably to inform the adverse party of the asserted cause of action." Ordinarily, pleadings dismissed to Rule 8 are dismissed pursuant with leave to amend. However, this court believes that at some point there must be an end to the litigation before it. Many of the paragraphs set forth by Mrs. Schuchman concern matters that she raised at trial. The rest consists of little more than demands, charges and conclusions. The record reveals that the Schuchman family has occupied the property for a number of years now without making payment on the mortgage on which they were obligated. Surely at some point there must be an end to the materials filed by the defendants. Accordingly, the court will dismiss the counterclaims with prejudice. There are also motions for mandamus and for default against defendant Mercantile, neither of which are appropriate nor make sense as pled in this cause. Both those motions will also be dismissed with prejudice.

The other motion to be considered is the Motion to Alter or Amend the Judgment or for a New Trial. That motion is so verbose and rambling that this court believes it too could be dismissed. However, this court believes the matter would be better disposed of by ruling on the motion. This cause was tried to the court. While there was no discernible pattern in the presentation of defendants' evidence, we believe that the factual matters raised in the motion were all before the court at the time of trial. The matters were considered and the court found the evidence overwhelmingly in favor of plaintiff. Nothing offered in the motion affects that decision. Defendants also urge several legal

conclusions as grounds for ordering a new trial. Even considering those conclusions in the light most favorable to defendants, we do not believe they would constitute grounds for a new trial. Finally, defendants urge that the court's conduct prevented defendarts from receiving a fair trial. A review of the record reveals that this court's conduct was directed solely to the ends of permitting defendants to present their case as fully as possible. If our conduct in allowing such latitude was prejudicial, the harm was to plaintiff, not defendants. While we sympathize with defendants because of the position in which they now find themselves, plaintiff is entitled also to its rights.

We hope we have now ruled fully on the motions filed by Mrs. Schuchman. Because we considered her motion for a new trial as also being a motion to alter or amend the judgment, the time for appeal of this matter will commence to run from the date of this order. Accordingly, all motions filed by defendants following the decree and order directing sale of July 12, 1983 by this court must be and the same hereby are denied.

IT IS SO ORDERED.

DATED: This 5th day of June, 1984.

WILLIAM L. BEATTY
UNITED STATES DISTRICT JUDGE

NOTE: CLERK TO SEND COPIES TO ALL PARTIES.

Appendix L-1
5

Filed June 5, 1984

A-27

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF ILLINOIS

FILED

FILED
A. LARVIN HELART
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
ALTON OFFICE

A. LARVIN HELART
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
ALTON OFFICE

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

THOMAS L. SCHUCHMAN, ET AL.,

Defendants.

ORDER

Before the Court is the pro se defendants' motions styled as Objections to Complaint, Amended Motion for Summary Judgment, Motion for Rehearing on Motions for Summary Judgment and Judgment on the Pleadings, Motion to Make More Definite the Position of the Parties, Motion for Rehearing on Motion to Compel Compliance with Decree and Motion for Declaratory Judgment. The arguments of the respective parties were heard and the motions were taken under advisement.

The Court has extensively reviewed all of the documents submitted by the pro se defendants in this matter keeping in mind the admonition that the federal judiciary must be especially solicitous of the problems of the non-lawyer seeking to litigate in his own behalf. See Haines v. Kerner, 405 U.S. 948, 92 S.Ct. 963 (1972). Such pro se pleadings as these are held to less stringent standards than formal pleadings drafted by lawyers and are to be given a liberal construction. Estelle v. Gamble, 429 U.S. 109, 97 S.Ct. 285 (1976). Moreover, Rule 8 (f) of the

APPENDIX C

Federal Rules of Civil Procedure that all pleadings shall be so construed as to do substantial justice.

The defendants' notice styled as Objections to Complaint contains numbered paragraphs that specifically refer and correspond to appropriate paragraphs in the plaintiff's complaint. In each of these paragraphs the defendants "add to", "object to", "allow" or "deny" the averments of the corresponding paragraph in the plaintiff's complaint. A liberal construction of the contents of this document leads the Court to conclude that the defendants intended it to serve as an answer to the plaintiff's complaint and that justice would best be served if the document is taken as such. Therefore, the motion of the defendants entitled Objections to Complaint will be taken and entered on the docket as an Answer to the plaintiff's complaint on behalf of the defendant Terry Lynn Schuchman and as a Supplmental Answer on behalf of the defendants Thomas L. Schuchman and Lois C. Schau unless written objection to this action is received from these defendants by the Court within ten (10) days of the entry of this Order.

A motion for judgment on the pleadings pursuant to Rule 12 (c) of the Federal Rules of Civil Procedure should be treated as a motion for summary judgment when a moving party asks the Court to consider matters outside the pleadings as the defendants have done in this case. Sager Glove Corporation v. Aetna Insurance Company, 317 F.2d 439 (7th Cir. 1963). A summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure may

APPENDIX C

be granted a party only when it appears that there is no genuine issue as to any material fact. Fitzsimmons v. Best, 528 F.2d 692 (7th Cir. 1976.). An examination of all of the materials submitted by all of the parties to this action make it very clear that questions of material fact do remain on the issue of whether the defendants, Thomas L. and Terry Lynn Schuchman, were in default on the indebtedness in question here. Therefore, the defendants' motions styled as an Amended Motion for Summary Judgment and Motion for Rehearing on Motions for Judgment on the Pleadings and Summary Judgment are denied.

A Motion for More Definite Statement pursuant to Rule 12(e) of the Federal Rules of Civil Procedure may be granted only if the pleading to which it is directed is so vague or ambiguous that a party cannot reasonably respond to it. Choat v. Rome Industries, Inc., 480 F. Supp. 387 (D.C. GA. 1979). After a review of the pleadings to which the defendants' Motion to Make More Definite the Position of the Parties is directed, this Court finds that all of the information necessary for the defendants to frame a response is present in the pleadings in question and that they are not so vague or ambiguous that the defendants cannot reasonably respond. The defendants' motion is therefore denied.

The defendants' motion styled as a Motion for Rehearing on Motion for Compliance with the Decree Vacating Marshal's Sale seeks an order directing the Small Business Administration to return certain monies received by them from a third party pursuant to a marshal's sale of the property in question here.

The Court had previously denied the defendants' motion on the ground that the defendants had no standing to assert the relief prayed for. Nothing has since been presented to the Court indicating that the defendants are now suffering an injury in fact which results from the Small Business Administration keeping the monies in question. The defendants' motion must therefore again be denied.

The defendants' motion styled as a Motion for Declaratory Judgment on the Legal and Equitable Issues of the Complaint can be liberally construed either as a motion for summary judgment or a complaint for a declaratory judgment pursuant to Title 28 of the United States Code, Section 2201. If taken as a motion for summary judgment, it must be denied for the reasons set out above. If taken as a complaint pursuant to Section 2201, this Court declines to exercise jurisdiction over the pleading in the interest of judicial economy. In either event, the relief the defendants seek in their motion is denied.

Lastly, it is evident from a review of all the documents submitted by the pro se defendants that they are desirous of asserting certain counterclaims against the government. However, no single document submitted by the defendants can be interpreted as a pleading asserting such claims. This Court does not feel it must cut and paste a dozen or so documents together for the defendants so they might frame an acceptable pleading asserting their claims. If the defendants feel they have justiciable claims against the government arising out of the facts at issue here they must submit a pleading which will allow this Court and

APPENDIX C

the plaintiff to assess the factual and legal basis of those claims.

Accordingly, the pro se defendants' motions for Amended Summary Judgment, Motion for Rehearing on Motions for Summary Judgment and Judgment on the Pleadings, Motion to Make More Definite the Position of the Parties, Motion for Rehearing on Motion to Compel Compliance with Decree and Motion for Declaratory Judgment are denied. The motion of the defendants entitled Objections to Complaint will be taken and entered on the docket as an Answer on behalf of the defendant, Terry Lynn Schuchman and as a Supplemental Answer on behalf of the defendants Thomas L. Schuchman and Lois C. Schau unless written objections to this action are received by the Court within ten (10) days of the entry of this order.

IT IS SO ORDERED.

DATED: This 28th day of August A.D. 1985.

WILLIAM L. BEATTY
UNITED STATES DISTRICT JUDGE

NOTE: CLERK TO SEND COPIES TO ALL PARTIES.

APPENDIX C

United States District Court, Southern District of Illinois

A833207

BOOK 2623 PAGE 1331

United States
Plaintiff

1985 DEC 24 PM 1:01
BOOK 2623 PAGE 1331
RECORDER

No. 80-514

vs.

Lynn Murphy

Schuchman et al
Defendant

FILED

JAN 1 - 1985

A. MARVIN HELART
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
ALTON OFFICE

ORDER

Motions in the instant cause come on for hearing, all parties being present The motion to Intervene of Lynn Murphy heard and allowed. The motion of Lynn Murphy to set aside this court's order of December 14, 1982 heard and denied. The motions of Thomas Schuchman, Terry Lynn Schuchman and Lois Shaw for summary judgment heard and denied, as factual issues remain. The motion of the United States for summary judgment, presented orally, is to be presented formally with supporting memorandum The cause is ordered set for trial

W. J. Beatty

Recorder's Note: THIS IS A COPY

02364

Page 1 of 8 To Be Recorded ~~Appendix A page~~ (of 1

See Also Document recorded Book 2532 Pages 705-706-707

Recorder's Note: THIS IS A COPY

THE COURT: Do you have anything to say, Mrs. Schau?

MRS. SCHAU: Some things that I don't understand, Terry has a college education and I don't and there are some things I do not understand. I am doing the best I know how. I have the mortgage note on the property and that is the claim that I -- that he should be disqualified.

THE COURT: All right, that motion will be denied. Now what's the next motion you want to take up?

MRS. SCHUCHMAN: Summary judgment.

THE COURT: Your amended motion for summary judgment.

MRS. SCHUCHMAN: May I ask if the judge has read this?

THE COURT: I have read all the papers you have filed. All right, what do you have to say about that?

MRS. SCHUCHMAN: Well, before we argue this, I would ask that Mr. Proud address himself to your order of January 14th that he file a motion for summary judgment and a memorandum. I cannot argue this until I have that, and ten days we had already, you ordered him to do that and then I would have ten days to file an answer, and it has not been filed.

THE COURT: I ordered him to file a motion for summary judgment?

MRS. SCHUCHMAN: Summary judgment and memorandum.

THE COURT: January 14th?

MRS. SCHUCHMAN: Yes, sir, it was a handwritten order.

THE COURT: They haven't filed a motion for summary judgment.

even respond to the offer of payment. They turned that six thousand dollar loan into a forty whatever thousand dollar loan by buying the house, when they could have just received the SBA disability check every month and take care of it.

MRS. SCHUCHMAN: This is allowable under law.

THE COURT: All right now Mrs. Schau do you have anything to say on your motion for judgment on the pleadings?

MRS. SCHAU: I am the innocently injured third party. They took these actions against me and had this summons and all and embarrassed me in front of a great number of people, and then I also put up other money to take care of the thing, and this was lost, but it's just because they have been shuffling the thing around and the people did not even want to take the money after I got it.

THE COURT: If anybody has been shuffling things around here it isn't the United States Government.

MRS. SCHUCHMAN: They failed to answer.

MRS. SCHAU: They have for three years and now we have just decided to shuffle them back.

MRS. SCHUCHMAN: By the docket itself, Your Honor, on October 18th, October of 1981 this was to come to court, and the U.S. delayed, said they were waiting for an opinion. They filed suit in June of 1980. That's a year and a half prior. What were they waiting for, and again I state the law that says equity is to those who protect their rights and not to those who

COPY OUT

A721741 A-35

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA

FOR THE SOUTHERN DISTRICT OF ILLINOIS

FILED

DEC 14 1982

A. MARVIN HELART
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
ALTON OFFICE

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CIVIL NO. 80-5143

THOMAS L. SCHUCHMAN, TERRY LYNN SCHUCHMAN, LOIS C. SCHAN, BELLEVILLE CROWN FINANCE, MERCANTILE TRUST COMPANY, FIRST NATIONAL BANK OF BELLEVILLE, FAIRVIEW RELIABLE LOAN CO., INC., a/k/a ASSOCIATES FINANCIAL SERVICES, and BANK OF BELLEVILLE,

Defendants.

ORDER VACATING DECREE DIRECTING SALE OF MORTGAGED PROPERTY, SETTING ASIDE UNITED STATES MARSHAL'S SALE AND MARSHAL'S DEED

Now on this 29th day of November, 1982, come on for hearing the motions of defendants Thomas L. Schuchman, Terry Lynn Schuchman and Lois C. Schau to set aside the decree directing sale of mortgaged property, the United States Marshal's Sale and United States Marshal's Deed. The defendants all appear pro se and the United States appears by Clifford J. Proud, Assistant United States Attorney. The Court proceeds to hear argument from all parties. An examination of the Court file reveals that defendants are in default and no answers are on file. Defendants argue that although the Court files reveal no answers, they all had sent "answers" to the United States Attorney's office prior to default. The United

States Attorney admits that his office received "answers" from defendants consisting mainly of copies of correspondence between defendants Schuchman and the Small Business Administration. The Court notes that all defendants were properly served by personal service or publication; however, the notice of Marshal's sale was published only three times in the St. Clair County Reporter instead of four times as ordered by the decree of this Court. The Court also notes that defendants' motions are made within one year of the entry of the decree of sale in this cause. Therefore, this Court, being fully advised in the premises, finds the motions should be granted and it is, therefore,

ORDERED, ADJUDGED and DECREED that, in accordance with Rules 55(c) and 60(b)(1), Federal Rules of Civil Procedure, the Decree and Order Directing Sale of Mortgaged Property, entered February 23, 1982, the United States Marshal's sale of April 20, 1982, and United States Marshal's deed issued October 20, 1982, are all set aside and vacated. Answers that have been tendered by defendants are Ordered filed and the Clerk is directed to reset this matter on the Court's docket.

ENTER: ~~November~~ December 14, 1982.

A True Copy
Attest:
A. Marvin Nelart
Clerk, U. S. District Court
Southern Dist. of Illinois
BY Patsy Drew
DEPUTY CLERK
DATE December 14, 1982

United States District Judge

still in effect, you aren't here.

MRS. SCHUCHMAN: We have filed a freedom of information request with the District Attorney's office and we might ask him about that now.

THE COURT: Did they file such a request?

MR. PROUD: Yes, they did, Judge.

MRS. SCHUCHMAN: Have they complied with it? Why don't we ask Mr. Proud that.

MR. PROUD: Did we comply? We're not going to comply while this thing is still in litigation.

MRS. SCHUCHMAN: I contend their lien for noncompliance they have in their file answers that were filed properly in accordance with the summons and they were asked to forward those to the court and they did not.

THE COURT: But you didn't file anything with the Clerk of the Court.

MR. PROUD: Judge, I think I can clear this up and Mrs. Schuchman is partially correct with what she says. I have poured through a second file that contains some documents that I believe Mrs. Schuchman sent down to our office, and what they are is they are mostly correspondence between her and/or her husband and the SBA. Up at the top it's written, answer with the file number, with the correct cause number. The file stamp shows they came to our office.

MRS. SCHUCHMAN: And there should be in that file stamped

in 1973 the First National Bank accused us of hiding checks. That's why the lawyers won't represent us.

THE COURT: Mr. Proud, I think the best thing to do with this case, I think we should set aside the default, go back to square one and we will set the thing up for hearing.

MRS. SCHUCHMAN: May I ask the Court that we could, before the hearing is set, go to the SBA because they did say--

THE COURT: All I am going to do is set aside the default. I'm going to set aside the decree ordering the sale. I am going to take the documents that you filed in Mr. Proud's office as either entries of appearance or as answers for the three of you, but I am going to set this thing down again on the 17th of December and we're going to, in fact we're starting over again. Do whatever you want to do with the SBA.

MRS. SCHUCHMAN: If we make it current with them before then, that's no case then?

THE COURT: That's up to the SBA. I'm going to set it for one o'clock on the 17th of December. That's a Friday.

MRS. SCHUCHMAN: Would it be possible to set it for a Monday because he has to close the shop?

MRS. SHAW: I have a doctor's appointment on this Friday.

MRS. SCHUCHMAN: We also are trying, we haven't given up with finding a lawyer, because they are in, you'll get to hear all of it then, they should have accepted the VA checks. They had no cause to buy the first mortgage, because that check--

A-39

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA

FOR THE SOUTHERN DISTRICT OF ILLINOIS

FILED
DEC 20 1982
A. MARVIN HELART
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
ALTON OFFICE

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THOMAS L. SCHUCHMAN, TERRY LYNN SCHUCHMAN, LOIS C. SCHAN, BELLEVILLE CROWN FINANCE, MERCANTILE TRUST COMPANY, FIRST NATIONAL BANK OF BELLEVILLE, FAIRVIEW RELIABLE LOAN CO., INC., a/k/a ASSOCIATES FINANCIAL SERVICES, and BANK OF BELLEVILLE,

Defendants.

CIVIL NO. 80-5143

PETITION FOR LEAVE TO INTERVENE

Now comes Lynne Murphy, by her attorneys, Gomric and Kurowski, and respectfully petitions the court to intervene in the above numbered case and for her reasons states as follows:

1. Petitioner is the assignee of the Small Business Administration having received an assignment from the Small Business Administration of any and all interest in the real estate which is the subject of the above foreclosure.

2. Petitioner has expended a sum of money in exchange for the assignment.

3. Petitioner is presently the recipient of a warranty deed from the Small Business Administration and is in fact the owner of record of said real estate.

4. The period of redemption is passed substantially.

5. Petitioner was in the process of arranging a sale on said premises.

WHEREFORE, any order entered by this Court in the above numbered cause would substantially affect the rights of the petitioner herein

who is an innocent third party and the title holder to the property by means of a warranty deed which property is subject of the dispute in the above numbered case.

Respectfully submitted,

By James J. Gomric

James J. Gomric
GOMRIC & KUROWSKI, P.C.
6 East Washington
Belleville, IL 62220
(618) 234-2708

A-41

U.S. SMALL BUSINESS ADMINISTRATION

WASHINGTON BUILDING
FOUR NORTH OLD STATE CAPITOL PLAZA
SPRINGFIELD, ILLINOIS 62701

January 27, 1983

Mr. and Mrs. Schuchman
122 East Shore Drive
Belleville, Illinois 62221

Re: Colonial Barbershop and
United States vs. Thomas L. Schuchman, et. al.
Civil No. 80-5143

Dear Mr. and Mrs. Schuchman:

Thank you for the Notice of Hearing on February 18, at 9:30 a.m. at Alton, Illinois. I have checked with our Chicago Office and Chicago Title Company and have determined that the foreclosure has wiped out our first two mortgages, they no longer exist and that we have no authority to purchase a house from somebody without a court order. I have not spoken to Mr. Gomric but I do not believe that he will give us title without a court order also. Therefore, our previous offer to you is conditional upon obtaining a court order as I previously stated.

Very truly yours,

William A. Krajec

William A. Krajec
Branch Counsel

WAK/sc

cc: Clifford Proud
Assistant U.S. Attorney
East St. Louis, Illinois

Appendix O page 1 of 1

10/14/82

No. CML 039639

A-42

FIRST NATIONAL BANK OF BELLEVILLE

BANK MONEY ORDER

BELLEVILLE, ILLINOIS

October 14, 1982

REMITTER - FIRST NATIONAL BANK OF BELLEVILLE
FOR Martin and Jacqueline M. Gomric

PAY

1ST. NAT'L BANK BELLEVILLE 42333 AND 00 CTS

TO THE ORDER OF Small Business Administration

$ 42,333.00

AUTHORIZED SIGNATURE

Robbie

70-138
819

121

Colonial Barber Shop
778685 1007

"039639" :081901380: 99 943 2" "0004233300"

Pay Any F.R.B. Br. or Gen. Depositary for Credit U.S. Treas. This is in Payment of U.S. Oblig.; Must be paid at Par. N.P. Do Not Wire Non-Payment. Small Bus. Adm. Denver, CO 73 09 6501

0801127670621023B2 316

THE COURT: All right, there was no sale.

MRS. SCHUCHMAN: They can't accept money for the sale of my property and they have and they still have that money, so I think I am in default, and I state that in this motion. The plaintiff made no appeal. They have not replied to anything. They have not filed a motion for summary judgment or memorandum that was ordered on January 14th.

THE COURT: Do you have anything to say about the motion, Mr. Proud?

MR. PROUD: It's basically directed to Mr. Gomric's complaint, Your Honor, and maybe perhaps the SBA.

MRS. SCHUCHMAN: This is the SBA.

MR. PROUD: Do you mind if I talk? Thank you. Whatever is going on between Small Business Administration and Mr. Gomric is of no concern of these defendants.

MRS. SCHUCHMAN: I object.

MR. GOMRIC: The only, in behalf of the intervening party I would indicate to the Court, I believe this argument and this motion arises from innate confusion on the part of Mrs. Schuchman. She is confusing the point of the sale and the foreclosure with any assignment or any transfer between my client and the SBA. They are not one and the same. Your order of the 14th had nothing to do with any assignment and only dealt with the supposed foreclosure sale. In light thereof this motion has absolutely no merit whatsoever.

It looks like this.

THE COURT: Motion for rehearing on motion to deny petition for relief to intervene?

MRS. SCHUCHMAN: By Mr. Gomric and Mr. Krajak and Mr. Proud's admission, anything now is between the SBA and Mr. Gomric, his money, his client's money is in disposition between the SBA and Mr. Gomric, and his client, and it has nothing to do with this case, and therefore he should be severed as a third party so that this case can come to trial, and this states so. He has no claim on the property. He has no cause to be in this. The sale was set aside so any money he has coming to him is between the SBA, and that's what you said on the previous motion so you are agreeing with my motion. I would like at this time to have him severed from this case.

THE COURT: Mr. Gomric?

MR. GOMRIC: The Court heard the argument in regard to the intervention and there is quote an assignment of interest of the SBA, the fact that the U.S. government is still herein and the fact that there is an assignment does in fact give us a substantial interest in the outcome. In light of this, I think your prior ruling on the motion to intervene is correct.

THE COURT: Do you have anything to say, Mr. Proud?

MR. PROUD: I agree with Mr. Gomric.

MRS. SCHUCHMAN: You have stated that any money is between him and the SBA. The SBA should return it. They have no sale.

A-45

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF ILLINOIS

FILED

JUN 13 1983

A. MARVIN HELART
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
ALTON OFFICE

UNITED STATES OF AMERICA,	[	
Plaintiff,	[	
-vs-	[	No. 80 5143
THOMAS L. SCHUCHMAN, ET AL.,	[	
Defendants.	[	

ORDER

The Court having heard on June 3, 1983, the following motions of the pro se defendants and being fully advised of the premises by all the parties holds that:

1. The motion of the pro se defendants filed May 5, 1983, to vacate this Court's order dated May 28, 1983, is without merit and is therefore denied;

2. The motion of the defendant Lois C. Schau to strike the defendant Mercantile Trust Company as a party filed May 5, 1983, was orally withdrawn by the defendant at the motion hearing;

3. The motion of the pro se defendants to dismiss the complaint for lack of jurisdictional amount filed May 10, 1983 is without merit and is therefore denied;

4. The motion of the defendant Lois C. Schau to strike the defendants Belleville Crown Finance and First National Bank of Belelville as defendants is without merit and is therefore denied;

5. The motion of the defendants Thomas L. Schuchman and

12 of 52

SUPREME COURT
APPENDIX Y (2)

Lois C. Schau to strike the defendant Fairview Reliable Loan Company and Bank of Belleville as defendants filed May 10, 1983, is without merit and is therefore denied;

6. The motion of the defendant Thomas L. Schuchman for summary judgment filed May 19, 1983, is without merit and is therefore denied;

7. The motion of the defendant Lois C. Schau for summary judgment filed May 19, 1983, is without merit and is therefore denied;

8. The request of the defendant Lois S. Schau for declaratory relief filed May 19, 1983, is without merit and is therefore denied;

9. The request of the defendant Thomas L. Schuchman for declaratory relief filed May 19, 1983, is without merit and is therefore denied;

10. The request of the defendant Lois C. Schau for declaratory relief filed May 26, 1983, is without merit and is therefore denied;

11. The request of the defendant Thomas L. Schuchman for injunctive relief filed May 26, 1983 is without merit and is therefore denied;

12. The request of the defendants Thomas L. Schuchman and Lois C. Schau for relief from untrue allegations filed May 26, 1983, is without merit and is therefore denied;

SUPREME COURT
APPENDIX Y (3)

13. The motion of the defendants, Thomas L. Schuchman and Lois C. Schau to strike the amended complaint filed May 26, 1983, is without merit and is therefore denied;

14. The motion of the defendant Thomas L. Schuchman for a continuance pursuant to Title 28 of the United States Code, Section 2407 filed May 26, 1983, is without merit and is therefore denied;

15. The motion of the pro se defendants for a default judgment against the Mercantile Trust Company filed June 2, 1983, is without merit and is therefore denied;

16. The request of the defendant Terry Lynn Schuchman filed June 2, 1983, to vacate the order of this Court dated May 25, 1983, is without merit and is therefore denied;

17. The request of the pro se defendants for the signature of the current attorney of record for the plaintiff to appear on the complaint filed June 2, 1983, is without merit and is therefore denied;

18. The request of the defendants, Thomas L. Schuchman and Terry Lynn Schuchman to divest the claim of Belleville Crown Finance filed June 2, 1983, is without merit and is therefore denied;

19. The request of the defendant Lois C. Schau for a

contempt of Court order against the plaintiff and third party intervenor filed June 2, 1983, is without merit and is therefore denied.

IT IS SO ORDERED.

DATED: This 13th day of June, A.D. 1983.

W. L. Beatty

WILLIAM L. BEATTY
UNITED STATES DISTRICT JUDGE

NOTE: CLERK TO SEND COPIES TO ALL PARTIES.

SUPREME COURT
APPENDIX Y(5)

A-49

6017 North Illinois Street
Fairview Heights, Illinois
April 24, 1980

no previous letter in file - mine accompanied 3/20/80 statement

Phil Ramos, Branch Manager
U.S. Small Business Administration
INB Center, Suite 414
One North Old State Capitol Plaza
Springfield, Illinois 62701

Dear Sir:

Please respond and acknowledge my request for deferment until August 1980 based on financial data furnished to you previously. No reply has been forthcoming from you regarding this matter.

It has also been brought to your attention that I have not received payment cards dated later than October 1979. I mentioned this to Mrs. Casey on her last visit on March 18 1980. Your prompt attention to the matter would be greatly appreciated.

Upon granting of deferment until August 1980 I plan to propose guaranteed repayment by assigning payment of my VA Compensation check payable to me on the first of every month to you, the SBA loan # 778685-10-07, beginning with the August 1, 1980 check. It is currently $98.00 monthly and due to be increased come October 1980. This should be sufficient to assure timely repayment ability.

Should there be any problem in assigning the VA Comp check to the SBA, please detail immediately. Your prompt courteous reply will be greatly appreciated.

Sincerely yours,

Thomas L. Schuchman

Thomas L. Schuchman/DBA
Colonial Barber Shop

RECEIVED
BY SMALL BUSINESS
ADMINISTRATION—SPRINGFIELD
APR 25 1980
AM 7 8 9 10 11 12 1 2 3 4 5 6 PM
A

Exhibit G

g. Guarantors/Standby Creditors. Notice of the Agency's intention to allow an extension should be sent to each guarantor and standy creditor. It is desirable to get their consent but this may not be practicable in all cases - especially in those involving smaller balances. It is necessary to, at least, assure that they have the knowledge and enough time to object (a period of time should be stated in the letter). In some cases, the firm may be so credit worthy or the loan so collateralized that there is no need for any further reliance on the guarantees or standby creditors to support the loan. In such instances, the 327 action should document these facts and may authorize the extension without further consideration of its effect on guarantees or standbys.

h. Additional Collateral. If additional collateral is taken as consideration for granting a renewal or extension, it must be recognized that the Agency's lien may be invalidated in the event the borrower files a petition in bankruptcy within ninety days.

i. Perfecting the Action. Counsel shall be responsible for the completion, filing, etc. of any new instruments (i.e. Note, Allonge, etc.) which he/she deems necessary to perfect the transaction.

51. DEFERMENTS

The PM supervisor may authorize deferment of loan installments (whether monthly, quarterly, semiannually, or annually) to the maturity of the loan. Such action may be taken at the request of the borrower and/or the recommendation of the loan officer when, in the opinion of the supervisor, it is an appropriate adjunct to a workout effort (i.e., those instances where a deferment will more realistically reflect the loan condition on the Agency's records but notice to borrower of the action taken may hinder collection efforts). DEFERMENTS WILL NOT BE INITIATED FOR THE SOLE PURPOSE OF STATISTICAL REDUCTION OF THE DELINQUENCY RATE. The basic purpose of a deferment is to enhance the borrower's cash flow, trade credit, etc. and thereby improve the likelihood of further payments to SBA in the long run - a short run penalty for a long run benefit.

a. Limitations. Deferments of delinquent loan installments may be allowed for the entire period of delinquency -- especially if a new payment plan has been worked out. Deferment of future installments should generally be held to a six-month periods - timed to expire upon receipt of new year-end financial statements. No single deferment action shall exceed one year of future installments. Consideration may be given at the end of a deferment period, to additional relief based on the then existing financial situation (review of financial statements, etc.).

b. Borrower Requests. Borrowers requesting deferment of installments

SBA FORM 988A (3-75) REF 00232 REPLACES PREVIOUS EDITIONS AND SBA FORM 988C

NITED STATES DISTRICT COURT OF AMERICA
FOR THE SOUTHERN DISTRICT OF ILLINOIS

ATORS, ET AL
espondants

80-5143

RECEIVED

MODIFICATION OR ADMINISTRATIVE ACTION
(For Issue-Office Use Only)

SECTION A - IDENTIFYING DATA - Prior to this Action

1. Name (Insl. trade) and Address (Insl. ZIP):
Colonial Barber Shop
Thomas L. Schuchman d/b/a
6017 North Illinois Street
Fairview Heights, IL 62208

2. Loan Approval: Date 4-21-82; Gross $41,100.00; SBA $n $41,100.00; SBA Part % 100.000

3. Type: D IP G GP X L G; Bank Servicing; SBA Servicing; Date - IGP Purch.

4. Disbursements: (Gross) Date - 1st; Last; Tot. Amt. $41,100.00; Fully Disbursed? Yes No

5. Servicing Office No. 0513

6. Classification: Current; Delinq. In. Liq.; Chg. Off; Col. Pur. X

7. Delinquencies: No. Payments; Total Amt.

8. Loan Balance: $

9. Appraised: Date; By Whom:

10. Values ($000): All Col. or Col. Pur.; Prior Liens

11. Maturity Date:

a. Loan/Case No.: 7 7 5 6 5 5 0 7 — This Action No. 1 7

c. Report Date: 0 7 2 1 8 3

REFERENCE FOR CHANGES ONLY

5. Redesignate Servicing Office
6. Revise Instal. Type (Enter P, P, or X)
Revise Instal. Freq. (Enter M, Q, S, A, or X)
J F M A M J J A S O N D
OP&FM USE ONLY
Revise Instal. Amount
Revise Next Instal. Due Date
Revise Maturity Date
(If above revised installment amt. is temporary,
Future Instal. Amount
Future Instal. Due Date
Issue New Repay. cards to Bor. (Enter 00)
7. Transfer Loan to In-Liquid. (Enter 438)
Trans. Loan from In-Liq. to servicing (Enter 437)
Date Loan Trans. to or from Liquid.
8. Date Loan Trans. to In-Litigation
Error Date Loan Removed From In-Lit.

SECTION B - INSTRUCTIONS TO OP&FM - For this Action

REFERENCE — ADS CHANGES ONLY
1. Charge-off Loan (Enter 418)
2. Recommend Co-Off Loan (Enter 418)
3. Terminate Guar. Loan (Enter F or V only)
Effect. Date Guar. Loan Term.

4. Approved Amount — Code
Orig. Gross
Orig. SBA $n
Reduce Gross by
Red. SBA $n by
Reinstate Gross
Reinstate SBA $n
151
152
153

Ref. 8-30 (Expired)

(12) Payment of Advance & Expenses - $46,082.60 to Lynne Murphy and James J. Gomric, her attorney

SECTION C - JUSTIFICATION AND APPROVAL SIGNATURES - For this Action SOP 50-51 PARA 39-40; 130

CAUSE FOR REPORT: To repay the purchaser of a Certificate of Purchase of collateral real estate for the total amount of his purchase price plus 9% interest from the date of payment to the date the check will be received. It is also the purpose of this 327 to reverse the acquisition of the COLPUR to a regular liquidation account, to reinstate the principal balance and to accrue interest at the regular loan rate until the loan is paid.

COMMENTS: The collateral real estate securing the subject loan was foreclosed by the U.S. Attorneys Office and the property purchased by the SBA at a U.S. Marshal sale on April 20, 1982 for a purchase price of $41,100. After the purchase at the sale, the Agency was given a Certificate of Purchase by the U.S. Marshal's Office in lieu of a deed to the property. This Agency sold the Certificate of Purchase to Lynne Murphy-all of its right, title, and interest, in and to the U.S. Marshal's Certificate of Purchase for $42,949.50. This money was forwarded to Denver on October 18, 1982 to be credited to the COLPUR account and coded 367. It is our understanding that the money is being held in abeyance.

The owners of the property, Mr. Thomas and Mrs. Terry Schuchman contested the foreclosure action. It appears that the U.S. Attorneys Office advertised the sale only three times rather than the four times required by federal law. Mrs. Schuchman also sent her Answer to the Complaint to the U.S. Attorneys Office rather that to the court. She was subsequently declared in default. The judge, after numerous hearings and pleadings and motions, declared the previous judgment invalid and the sale set aside. On June 27, 28, and 29 a subsequent hearing was held and a summary judgment was received by the Agency. We now have orders to sell the property again.

It will be necessary to repay Lynne Murphy and her attorney, James Gomric, the amount of money paid for the Certificate of Purchase plus interest at the rate of 9%. A copy of Mr. Gomric's letter requesting repayment is attached to the 327.

Pay to Lynne Murphy and James J. Gomric, her attorney.	$42,949.50
Interest from October 18, 1982 - August 10, 1983 at 9%	3,133.16
Pay total of $46,082.60	

The $42,949.50 will be a refund of the payment made on the COLPUR account. The $3,133.16 will be an unrecoverable expense.

EXHIBIT A 2-6-86

SBA FORM 327 SOP 20 21-1 (8-82) EDITION OF 1-81 WILL BE USED UNTIL EXHAUSTED — COPY 1 - FIELD CASE FIL

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NOTAR

Subscribed an
of February ,

A-52

UNITED STATES DISTRICT COURT OF AMERICA
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UATORS, ET AL
Respondants

80-5143

RECEIVED
FEB 06 1986
A. MARVIN HELART

Petitioners

OFFICATION OR ADMINISTRATIVE ACTION

SECTION A - IDENTIFYING DATA - Prior to this Action

Colonial Barber Shop
Thomas L. Schuchman d/b/a
6017 North Illinois Street
Fairview Heights, IL 62208

9. Servicing Office No.: 0517

SECTION B - INSTRUCTIONS TO OP&FM - For this Action

SECTION C - JUSTIFICATION AND APPROVAL SIGNATURES - For this Action SOP 50-51 PARA 39-40; 150

The COLPUR account will be closed out and the noncash acquisition of April 20, 1982 reversed and the account reinstated under liquidation status. The interest should accrue on that loan at the interest rate of 6 5/8% per annum.

It is imperative that all of this is done quickly as the second sale for the property has been ordered by the court for August 18, 1983. I must know the amount of the loan plus interest through that date in order to enter a protective bid at the sale. The property has been appraised at approximately $65,000 so that there is sufficient equity for me to bid the full amount of the loan.

RECOMMENDATION: It is recommended that the amount of $46,082.60 be paid to:

Lynne Murphy and James J. Comric, her attorney

James J. Comric Law Office
96 East Washington
Belleville, Illinois 62220

It is further recommended that the acquisition of the COLPUR property of April 20, 1982 be reversed and the Colonial Barber Shop loan 778785 10 07 be reinstated in liquidation status and the interest accrued from the date of April 20, 1982 at 6 5/8% interest.

Our Branch Counsel's legal opinion of the repayment of the purchase of the Certificate of Purchase plus interest is attached to this 327.

Marjorie L. Casey
Marjorie L. Casey, Loan Officer

COUNSEL'S CONCURRENCE: See attached memo

FINAL ACTION ABM: Concur

William A. Krajec, Branch Counsel

D. I. Brookhart, Assistant Branch Manager

EXHIBIT # 2-6-86

SBA FORM 327 SOP 30 21-4 (5-83) EDITION OF 1-81 WILL BE USED UNTIL EXHAUSTED

THE COURT: All right, the motion filed July 16th to compel disqualification of Judge Beatty signed by Thomas L. Schuchman and Terry Lynn Schuchman is denied.

MRS. SCHUCHMAN: You did say I would have ten minutes for a closing statement. You did say I could have ten minutes for a closing statement.

THE COURT: No, I did not say you could have ten minutes. You said you could have ten minutes for a closing statement two hours ago. I will give you three minutes.

MRS. SCHUCHMAN: We are depending on Skeels (phonetic) versus Universal C.I.T. Credit Corporation and Biquill (phonetic) versus Associated Hardware and our cases, and I do object, I do claim you are prejudice, extremely so, because you have not even examined the exhibits showing your prejudice. You have not ruled on the defect in the record, and you have conferred and given Mr. Reppert time to go out and make a copy and make an oral motion and this is the conduct that Mrs. Shaw claims in her letter of July 12th, it is extremely prejudicial. You can't possibly make a decision without having seen the material admitted, and it's brand new. You haven't seen it before, but you have made a ruling, and I believe that is extremely prejudicial, and it's the way you have ruled throughout this case.

THE COURT: Now Mrs. Schuchman, and both of you, I think I have told you this before and I think it's in the record but I want to tell you again that I have ruled on this matter. I

have ruled on it a long time ago. Most of these pleadings and documents you have filed since then have been addressed to the issue of whether or not I was right or wrong in my rulings and I may have been wrong. I am not perfect. I may well have been wrong, but that has to be decided, if I am wrong, then that's up to the Appellate Court to say so. You have a right to an appeal. If you want to appeal. do it. You are aware of that. You have talked about it. You know what the times are. You have read all the rules. My part in this case is through now and I mean this property is going to be sold when Mr. Reppert?

MR. REPPERT: I don't know the date, Your Honor. I can get that for you.

THE COURT: I am not through.

MRS. SCHUCHMAN: I would like to make an oral motion.

THE COURT: You're not going to make an oral motion.

MRS. SCHUCHMAN: You're prejudiced.

THE COURT: You may think I am prejudiced, and I have denied that motion. I don't think I am prejudiced. Again, you can raise that in your appeal.

MRS. SCHUCHMAN: You are. I would like to make an oral request for leave to file a writ of mandamus.

THE COURT: Please keep in mind your right to an appeal and if you want to take advantage of it, do so. That's all.

MRS. SCHUCHMAN: May I have an oral motion on a writ of mandamus to compel disqualification? May I have leave to file

A-55

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF ILLINOIS

FILED

1984 NOV 15 PM 4:36

A. JOHN VOELKER
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

THOMAS L. SCHUCHMAN, ET AL.,

Defendants.

No. 80 5143

ORDER

On November 13, 1984 the clerk of this court received the original and a copy of a document from the defendant Terry Lynn Schuchman entitled "Proof of Service" with a penciled notation as follows "please filemark original and this copy and return copy to me". This cause is presently on appeal to the Seventh Circuit Court of Appeals but despite that the defendant Terry Lynn Schuchman persists in attempting to file documents in this court.

IT IS THEREFORE ORDERED that the clerk of this Court receive such documents but not file them. The clerk shall mark said documents received and the date they are received and place them in a separate folder to be retained but they shall not be filemarked or included in the official court file.

DATED: This 15th day of November, 1984.

William L. Beatty

WILLIAM L. BEATTY
UNITED STATES DISTRICT JUDGE

NOTE: CLERK TO FORWARD COPIES TO ALL PARTIES.

Appendix G Page 2 and Brief

PROOF OF SERVICE

NOV 16 1984
A. MARVIN HELART
CLERK, U. S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
ALTON OFFICE

On February 7, 1983 I did file, among others, a pleading styled "Reiterati Answer" signed by Thomas L. Schuchman with district court deputy clerk Patsy Frew in the Alton District court clerk's office at 501 Belle Street Alton, Illinois 62002. I did have with me copies of all pleadings filed that day for service upon U.S. Assistant Attorney Clifford J. Proud. This was obvious to district court deputy Patsy Frew who very nicely told me that Mr. Proud was in the building that day and she would see that he got his copies if I left them with her, which I did. I do believe that is a valid service. However after the confusion today 11-8-84 when I tried to leave a copy of Memorandum with said attached with employees of the U.S. Attorney's office and I was told Janet Henkey was on annual leave and since I had typed her name I would have to wait until her return next week, I want to be certain I have valid service. Therefore I am placing a copy of pleading styled "Reiterative Answer" signed by Thomas L. Schuchman along with affidavit made 7-12-82 by Terry Lynn Schuchman attached in an envelope addressed to U.S . Attorney Frederick Hess, 750 Missouri Ave., E. St. Louis, Illinoos 62201 and marked Return Receipt Requested and Deliver to Adaressee Only and stamped certified mail recipt # P460 935 872 with correct postage affixed and depositing said in the out of town depository of the main Belleville Post Office at 2nd & Washingt in Belleville, Illinois on this 8th day of November 1984 and Likewise I am placing copies of Reiterative Answer signed by Thomas L. Schuchman and affidavit made 7-12-82 by Terry Lynn Schuchman in an envelope addressed to William A. Krajec, SBA Counsel, Four North Old State Capitol Plaza, Washington Building, Springfield, Illinois 62701 and marked Return Receipt Requested and Deliver to Adaressee Only and stamped certified mail receipt # P 460 935 873 with correct postage affixed and depositing said in the out of town depository of the main Belleville Post office at 2nd & Washingt St. Belleville, Illinois on this 8th day of November 1984. ATTACHMENT 5

Terry Lynn Schuchman
122 East Shop Dr.
Belleville, Ill. 62221 618-277-4089

Terry Lynn Schuchman

A-51

PLAINTIFF

UNITED STATES OF AMERICA

DEFENDANTS

(1) SCHUCHMAN, THOMAS L.

(2) SCHUCHMAN, TERRY LYNN

(3) SCHAM, LOIS C.

(4) BELLEVILLE CROWN FINANCE

(5) ~~MERCANTILE TRUST COMPANY~~

(6) FIRST NATIONAL BANK OF BELLEVILLE

(7) ~~FAIRVIEW RELIABLE LOAN~~ CO. INC., a/k/a ~~Associates~~ Financial ~~Services~~

Copy of pleading in pre paid Record

1/14/88 Intervenor: Lynn Murphy

CAUSE

18 USC 1345

Foreclosure of Mortgage

ATTORNEYS

~~Daniel A. Burgess, Jr.~~
United States Attorney
Theodore J. MacDonald, Jr., AUSA
750 Missouri Avenue
East St. Louis, IL 62201
618/274-[illegible]
FTS 277-[illegible]

William A. Krajec
Small Business Administration
INB Center, Suite 414
Springfield, IL 62701
217/492-4233

INTERVENOR LYNN MURPHY:
James Gorman
6 East Washington
Belleville, IL 62220
618/234-2788

Mercantile Trust Co:
Debbie Palmer
Legal Dept.
Mercantile Trust Co.
721 Locust St., St. Louis, MO 63166 NO FEES PAID

(4) H. Gary Apoian
Apoian, Ross & Funk
110 North Main
E. St. Louis, IL 62201
875-6900

(6) Brad L. Badgley
30 Public Square
Belleville, IL 62220

DEFTS 1, 2 & 3 PRO SE:
5/6/62: Request for notices:
Terry Lynn Schuchman
122 East Shore Drive
Belleville, IL 62221
618 277 4089

Lois C. Scham
2021 La Salle St.
Belleville, IL 62221

Thomas L. Schuchman
121 East Shore Drive
Belleville, IL 62221

STATISTICAL CARDS

CARD DATE MAILED

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF ILLINOIS
301 KING STREET
ALTON, ILLINOIS 62002

RECORD TRANSMITTAL LETTER

Date: July 31, 1985

Thomas F. Strubbe, Clerk
United States Court of Appeals
for the Seventh Circuit
219 South Dearborn Street, Room 2722
Chicago, IL 60604

Re: United States of America vs.
Thomas L. Schuchman and Terry L. Schuchman.

Trial Court Docket No: 80-5143.

U.S.C.A. Docket No: 84-2422.

Dear Mr. Strubbe:

I am sending you herewith the original/~~supplemental release~~ ~~appropriate entry~~ record on appeal. It consists of the following:

1 Volumes of Pleadings

8 Volumes of Transcript

_____ Volumes of Depositions

Exhibits: 4 Large Envelopes

Impounded Documents: _____

Other (specify): _____

Please acknowledge date of receipt of the above-mentioned materials on the attached copy of this letter.

Very truly yours,

A. MARVIN HELART, Clerk

By: Patsy Drew, Deputy Clerk

1 (1) COMPLAINT (ESL)
(1a) NOTICE of Suit to Foreclose Mortgage
Summons issued and fwd to U.S. Marshal

7 (2) ANSWER (Belleville Crown Finance)

22 SUMMONS returned exec. on FNB Belleville 6/24/80
(2a) exec on Belleville Crown Finance 6/24/80
exec on Associated Financial Serv. a/k/a Fairview Reliable Loan Co. 6/24/80
exec on Mercantile Trust 6/26/80
exec on Thomas Schuchman 6/27/80
exec on Lois Schan 7/1/80
unex on Terry Lynn Schuchman

31 (3) ANSWER (First Nat'l Bank Belleville)

6/16 TPS FOR JUNE, 1981 mailed to attorneys of record.

6/30 (4) MOTION for order for service by publication
(5) Affidavit for service by publication
Proposed order for service by publication
Proposed notice of publication (USA)

7/5 (6) ORDER (WLB) for service by publication
(6a) NOTICE of publication issued and forwarded to USA

8/31

8 (7) REQUEST to Clerk for Entry of Default by Pltf.
(8) AFFIDAVIT of Failure to Plead or Otherwise Defend in Support of Application for Entry of Default by Richard H. Lloyd (Asst. U.S. Atty.)
(9) DEFAULT ENTERED against the Defts, Thomas L. Schuchman, Terry Lynn Schuchman, Lois C Schan, Mercantile Trust Company and Fairview Reliable Loan Co. a/k/a Associates Financial Services, herein prusuant to Rule 55(a) of the FRCP for failure to plead or otherwise defend. By B. D. Hudgens, Clerk. DATED: April 3, 1981. Copies to all parties. sms

25 (9a) UNCLAIMED, letter to Thomas L. Schuchman -- Letter to Lois C. Schan --Letter to Terry Lynn Schuchman

7/29 NOTICES mailed for non-jury docket call set for June 19, 1981 at 1:30 p.m. with trial set for the month of July.

8/5 (10) MOTION to Amend Complaint with proposed order.
(foreclose a lien of Bank of Belleville)

8/9 (11) ORDER (WLB) Leave is granted Pltf. to file amended complaint. Copies. pb

(12) AMENDED COMPLAINT filed. pb

9/10 Summons issued on amended complaint and forwarded to Marshal. pb

9/23 RETURN of service on Bank of Belleville, June 15,1981.

9/30 (13) ANSWER to amended complaint (Belle. Crown Finance)

DATE	NR.	PROCEEDINGS
1981		
9/15	(14)	ANSWER to amended complaint (FNB Belleville) rb TPS mailed to Badgley
9/11		NOTICES mailed for non-jury docket call set for October 21, 1981 at 12:00 noon with trial set for the week of October 26th.
9/22	(15)	REQUEST to Clerk for Entry of Default (Bank of Belleville)
	(16)	Affidavit of Failure to Plead or Otherwise Defend in Support of Application for Entry of Default
	(17)	DEFAULT Entered this day, copy to all attorneys of record.
1982		
1/6		NOTICES mailed for non-jury trial set for January 25th. ph
1/8		Proposed decree and order directing sale (USA) rb
1/13	(18)	DECREE AND ORDER DIRECTING SALE OF MORTGAGED PROPERTY (WLB) copies to USAtty, SBA, and attorneys of record. pf
1/	(18a)	NOTICE of Marshal's Sale -- April 20, 1982, Front door of the County Courthouse, Belleville, IL pf
1/	(18b)	MARSHAL'S Return of Sale, costs $6.36
2/17	(19)	U. S. MARSHAL'S REPORT of sale Proposed decree confirming report of sale rb
3/3	(20)	DECREE confirming USMarshal's report of sale cc rb
4/6	(20a)	STATEMENT of defendant Terry Lynn Schuchman, requesting she receive any notice, order or pleadings filed in this case. pf
4/27	(21)	FILINGS by Mrs.Schuchman, 26 pages of copies of various papers. pf
4/22	(22)	FILINGS by Mrs. Schuchman, Exhibit List, A thru Z and other papers pf
7/12	(23)	MOTION for reconsideration (pro se, Terry Lynn Schuchman - letter) reconsideration for both Schuchman and Lois Schan eg
7/2		NOTICES mailed for hearing on pro se motion for reconsideration set for 9/9/82 at 12:00 noon cc: attys and by both cert.mail & reg. mail to Schuchmans and Schan eg

DOCKET SHEET CONTINUATION SHEET

United States of America	Schuchman, et al.	DOCKET NO. [illegible] PAGE 4 OF ____ PAGES

DATE	NR.	PROCEEDINGS
1982		
9/3		At the telephone request of Mrs. Schuchman, Hearing for 9/9/82 is being CANCELLED
9/7	(24)	LETTER to Judge B. from Mrs. Schuchman, treated as Motion for Continuance advised Mrs. Schuchman by telephone hearing has been cancelled.
9/8		Telephone cancellation of hearing, called USAttorney's office, Mr. Apolan's office and Mr. Badgley's office. p
Nov 22	(25)	AFFIDAVIT, Thomas L. Schuchman
	(26)	AFFIDAVIT, Lois C. Schau, attached exhibits AAA, BBB, and CCC
	26a	STATEMENT OF FACTS--- Exhibits AA-BB-CC-DD-EE-FF-GG-HH-II-JJ-KK-LL-MM-NN-OO-PP-QQ --- Page 5 of Exhibit AA is signed by Lois Schau.
	(27)	
11/22		MOTION to vacate with prejudice: Decree confirming U.S. Marshal's report of sale, etc. (Lois Schau)
	(27a)	LETTER re: request for hearing on 11/29/82 (Schau)
		Motion set for hearing on 11/29/82 at 10:00 a.m. (mmn/in book and parties called, including Gomric)
Nov 29	(28)	EXHIBIT RR -- See Statement of Facts filed Nov 22, 1982 by Mrs. Schuchman p
11/29 T. Hopwood		HEARING (WLB) Case called for motion to vacate filed by Lois Schau. Oral MOT to join in motion to vacate by Thomas & Terry Schuchman; allowed (WLB) Hearing held and motion to vacate is allowed. Order to be submitted by Clifford Proud. Cause to be set for non-jury trial on December 20, 19 at 9:30 a.m.
12/2		NOTICES mailed for non-jury trial on Dec. 20th at 9:30 a.m.
12/7		NOTICES mailed for non-jury trial reset for January 14th at 9:30 a.m.
Dec 14	(29)	ORDER(WLB) setting aside and vacating Marshal's sale of April 20, 1982 and Marshal's deed issued October 20, 1982. . . . Answers tendered by Defendants are ordered file and the Clerk is directed to reset this matter on the Court's docket. =====copies mailed this date, copy to Mrs. T. Schuchman CERTIFIED. pf
Dec 15		REF: Dec 14 ORDER, in compliance with last sentence of Order, see filings of 5/6/82; 5/17/82; 7/12/82; 11/22/82; and 11/29/82. pf
12/20	(30)	PETITION for leave to intervene(Lynne Murphy) (proposed order to be mailed in
	(31)	MOTION to vacate and nullify the Court's Order of December 14, 1982. (to be he on January 14th with non-jury trial). (REF. 1-14-83)
1983		Vol II of Record
Jan 10	(32)	LETTER/STATEMENT from Terry Lynn Schuchman with copy of Motion to Deny Petitio for Leave to Intervene signed by Lois C. Schau and copies of two letters signed by Thomas L. Schuchman. pf
~~Jan 12~~		~~PROPOSED Order received from Mrs. Schau~~ ~~pf~~
Jan 10	32a	MOTION to Deny Petition for Leave to Intervene by Lois Schau
Jan 12		PROPOSED Order

DATE	NR	PROCEEDINGS
1983		
Jan 14	(33)	MOTION for Summary Judgment (Lois Schau) (REF. 1-14-83)
	(34)	MOTION for Summary Judgment (Terry Schuchman) (REF. 1-14-83)
	(35)	MOTION for Summary Judgment (Thomas L. Schuchman) (REF. 1-14-83) (Proposed Conclusions of Law, 1 set ---PROPOSED Findings of Fact, 1 set)
	(36)	MOTION to Deny Petition for Leave to Intervene by Thomas and Terry (REF. 1-14-83 Schuchman and Lois Schau with proposed order for Judge's signature. pf
1/24		HEARING HELD (WLB)
T. Hopwood	(37)	ORDER (WLB) Motions in the instant cause come on for hearing, all parties being present. The motion to intervene of Lynn Murphy heard and allowed. The motion of Lynn Murphy to set aside this court's order of December 14, 1982 heard and denied. The motions of Thomas Schuchman, Terry Schuchman and Lois Schau for summary judgment heard and denied, as factual issues remain. The motion of the United States for summary judgment, presented orally, is to be presented formally with supporting memorandum. The cause is ordered set for trial. Copies. p
1/20	(38)	MOTION for rehearing on motion to deny petition for leave to intervene(Lois Schau,Terry & Thomas Schuchman) eg
1/24		Notice of setting of motion to deny petition set for 2/18/83 at 9:30 a.m. rb
2/1	(39)	AMENDED MOTION for summary judgment (Terry Schuchman) eg
	(40)	PROPOSED Findings of Fact
	(41)	PROPOSED Conclusions of law (Terry Schuchman) eg
	(42)	MOTION for Judgment on the pleadings (Thomas Schuchman) eg
	(43)	REITERATIVE ANSWER (Thomas Schuchman)
	(44)	PROPOSED findings of fact (")
	(45)	PROPOSED Conclusions of law (")
	(46)	MOTION for judgment on the pleadings (L.Schau) eg
	(47)	DUPLICATE answer (L.Schau)
	(48)	PROPOSED findings of fact (L.Schau)
	(49)	PROPOSED conclusions of law "
	(50)	MOTION to compel compliance with order vacating decree directing sale of mortgaged property, setting aside U.S. Marshal's sale and Marshal's deed (Terry Schuchman) eg
2/18 c	(51)	Proposed conclusions of law (Schuchman)
2/18	(52)	ORDER (WLB) that defts' motion to compel compliance with order vacating decree, motions for judgments on the pleadings, amended motion for summary judgments and motion for rehearing on order granting motion to intervene were heard and DENIED rb cc & cert to pro se de

SEE NEXT PAGE

DATE	NR.	PROCEEDINGS
1983		
Feb 24	(53)	OBJECTIONS to Complaint by pro se defendants
	(54)	AFFIDAVIT of Thomas L. Schuchman
	(55)	AFFIDAVIT of Terry L. Schuchman
	(56)	AFFIDAVIT of Lois C. Schau
	(57)	MOTION TO MAKE MORE DEFINITE THE POSITION OF PARTIES NAMED IN COMPLAINT AND THIRD PARTY LYNNE MURPHY AND HER ATTORNEYS GOMRIC AND KUROWSKI AND OTHER ATTORNEYS OF RECORD ON THE DOCKET
	(58)	MOTION FOR A DECLARATORY JUDGMENT ON LEGAL ISSUES AND EQUITABLE ISSUES OF THE COMPLAINT
	(59)	MOTION FOR REHEARING ON MOTION TO COMPEL COMPLIANCE WITH DECREE VACTING (Vacating) ORDER DIRECTING SALE OF MORTGAGED PROPERTY AND SETTING ASIDE MARSHAL'S SALE AND MARSHAL'S DEED
	(60)	MOTION FOR REHEARING ON MOTIONS FOR JUDGMENT ON THE PLEADINGS AND AMENDED MOTION FOR SUMMARY JUDGMENT. pf
	?	NOTICE of Setting, Friday, March 18, 1983 at 9:30am, Book & MM: pf
Mar 3	(61)	CERTIFICATION Hwy 159 Construction Federally Funded (by Thomas Schuchman)
	(62)	AFFIDAVIT, Thomas Schuchman
	(63)	CERTIFIED Transcript of SBA Account (by Thomas Schuchman) pf
Mar 15	(64)	PHOTOGRAPHS Federally Funded Hwy 159 Construction (by Mrs. Schuchman) pf
3-18	(65)	ORDER (WLB) Motions filed on 2-24-83 heard and taken under advisement. pb
3-18	(66)	AMENDED motion for summary judgment (defts)
	(67)	BRIEF
(3-21)		
4-28-83	(68)	ORDER(WLB) ruling on pro sedefendants' motions styled as ~~Objections to Complaint~~, DENIED -- Amended Motion for Summary Judgment, DENIED -- Motion for Rehearing on Motions for Summary Judgment and Judgment on the Pleadings, DENIED -- Motion to Make More Definite the Position of the Parties, DENIED-- Motion for Rehearing on Motion to Compel Compliance with Decree, DENIED-- Motion for Declaratory Judgment, DENIED -- ~~Objections to Complaint will be taken and entered on the docket as an ANSWER on behalf of the defendant, TERRY LYNN SCHUCHMAN and as a SUPPLEMENTAL ANSWER on behalf of the defendant: THOMAS L. SCHUCHMAN AND LOIS SCHAU unless written objection to this action is received from these defendants by the~~Court within ten (10) days of the entry of this Order - - - -Copies of this Order mailed to each attorney of record, Terry L. Schuchman, Thomas L. Schuchman and Lois Schau . . . pf Ref: 2-7-83 and 2-24-83
4-28-83	(69)	ANSWER of defendant, TERRY LYNN SCHUCHMAN x820
See #53	(69)	SUPPLEMENTAL ANSWER of defendant, THOMAS L. SCHUCHMAN
	(70)	SUPPLEMENTAL ANSWER of defendant, LOIS SCHAU pf
5/5		NOTICES mailed for non-jury trial set for the month of June. pb

PLAINTIFF | DEFENDANT | DOCKET NO 81-5143

United States | Thomas L. Schuchman | PAGE 1 OF ___ PAGES

DATE	NR	PROCEEDINGS
-5-83	(72)	MOTION to Strike Mercantile Trust Co. as a Named Defendant in Original Complaint by defendant Lois C. Schau
	(73)	MOTION to Strike Objections to Complaint as Answer to Complaint and Vacate Order Dated 4-26-82 by Thomas L. Schuchman, Terry Lynn Schuchman and Lois C. Schau
		NOTICE of setting of both motions, Friday, June 3, 1983 at 9:30am, copies to book, mmn.. pf
-10-83	(74)	REQUEST to Clerk for Entry of Default by Lois C. Schau, entry of default directed to First National Bank of Belleville, with AFFIDAVIT in support of Request attached
	(75)	MOTION TO STRIKE by defendant Thomas L. Schuchman and Lois C. Schau (as to defendant Fairview Reliable Loan Co., Inc., aka Associates Financial Services and Bank of Belleville)
	(76)	MOTION to Strike by defendant Lois C. Schau (as to defs Belleville Crown Finance and First National Bank of Belleville)
	(77)	MOTION to Dismiss by defendants Thomas L. Schuchman, Terry Lynn Schuchman and Lois C. Schau
	(78)	REQUEST to Clerk for Entry of Default by Lois C. Schau, entry of default directed to Belleville Crown Finance, AFFIDAVIT attached in support of.
	(79)	REQUEST to Clerk for Entry of Default, ~~entry of default directed to plaintiff-USA,-SBA,-AFFIDAVIT attached in support of,-~~ by Lois C. Schau, entry of default directed to USA, SBA, AFFIDAVIT attached in support of.
	(80)	REQUEST to Clerk for Entry of Writ of Assistance by Lois C. Schau
	(81)	REQUEST to Clerk for Entry of a Writ of Execution by Lois C. Schau ---- REQ-marked Received, FILED as instructed by RB. No notice of setting. pf
19/83	(82)	Amended MOTION for Summary Judgment by deft (Thomas L. Schuchman). sms
	(83)	Amended MOTION for Summary Judgment by Deft (Lois C. Schau). sms
	(84)	AFFIDAVIT of Terry Lynn Schuchman.. sms
	(85)	REQUEST for Declaratory Relief by Deft (Lois C. Schau). sms
	(86)	REQUEST for Declaratory Relief by Deft (Thomas L. Schuchman) sms
/23	(87)	CLERK'S denial of entry of writ of execution (exec 5/20, eod 5/23)
	(88)	CLERK'S denial of entry of writ of assistance (exec 5/20, eod 5/23)
	(89)	CLERK'S denial of request for entry of default(exec 5/20, eod 5/23)
	(90)	CLERK'S denial of request for entry of default(exec 5/20, eod 5/23)
	(91)	CLERK'S denial of request for entry of default(exec 5/20, eod 5/23)
	(92)	Copy of letter to Mrs. Schau from Clerk cc rb
	(93)	Copy of letter to Clerk from Mrs. Schau
25	(94)	ORDER (WLB) concerning papers filed which are directed to Clerk, i.e., that Clerk or deputies are not to act upon all matters without first submitting to Court for appropriate disposition (eod 5/25) cc rb

CIVIL DOCKET CONTINUATION 6-82

PLAINTIFF: USA

DEFENDANT: SCHUCHMAN

DOCKET NO 80-51-

PAGE 2 OF ___ PAGES

DATE	NR.	PROCEEDINGS
1983		
5/26	(95)	"ORIGINAL ANSWERS tendered July 11, 1980"(defts pro se)
	(96)	"CLARIFICATION of original 'answers' tendered July 11, 1970
	(97)	REQUEST to liberally construe original "answers tendered 7/11/80 as complaint for relief from untrue allegations
	(98)	REQUEST to liberally construe original "answer" tendered 8/1/80 as a complaint for injunctive relief
	(99)	REQUEST to liberally construe original "answer" tendered 7/3/80 as a complaint for declaratory relief
	(100)	ORIGINAL "answer tendered 7/3/80
	(101)	ORIGINAL "answer" tendered 8/1/80
	(102)	MOTION for continuance
	(103)	MOTION to strike amended complaint (defts pro se) r
Def III ed Finance		
6-1-83	(104)	AFFIDAVIT from Harry N. Sandstrom, Asst. General Counsel Norwest Financial Illinois, Inc. and Norwest Financial, Inc. p
6-2-83	(105)	REQUEST for Default and Default Judgment against Co-Party Mercantile Trust Co. in Favor of Pro Se Defendants (by all pro se defendants)
	(106)	REQUEST to Show Cause Why Order Dated May 25, 1983 Should Not be vacated and default entered against Plaintiff for failure to plead or defend-- (by pro se defendant Terry Lynn Schuchman)
	(107)	REQUEST for Signature of Current Attorney of Record for Plaintiff to Appear on complaints (by all pro se defendants)
	(108)	REQUEST to Divest Claim of Belleville Crown Finance (by pro se defendants Thomas and Terry Schuchman)
	(109)	REQUEST to Cite Plaintiff and Third Party Intervener Lynne Murphy and her attorneys Gomric and Kurowski for Contempt of Court Order (by pro se defendant Lois C. Schau)
	(110)	AFFIDAVIT of Thomas L. Schuchman pf
6-8-83	(111)	MOTION for Involuntary Dismissal by Terry L. Schuchman
	(112)	AFFIDAVIT Certification of SBA Form 327 dated 5-21-82, Terry Schuchman
		NOTICE of Setting, July 8, 1983, (not a motion day, check with Judge) pf
6/13	(113)	ORDER (WLB) that motions of pro se defts filed 5/5, 5/10, and others, are denied. See order for 19 rulings. cc r
6/14		NOTICES mailed for non-jury trial set for June 27th at 9:30 a.m. p
FILE 3		
6-23-83	114	AMENDED MOTION FOR INVOLUNTARY DISMISSAL by all defts. p
6-24-83	115	DEFTS' STATEMENT OF FACTS
	116	AFFIDAVIT of Deft. Lois C. Schau
	117	AFFIDAVIT OF Deft. Terry L. Schuchman
	118	AFFIDAVIT of Deft. Lois C. Schau p

DATE	NR.	PROCEEDINGS
1983		
6/27	119	MOTION to compel to produce (Defts)
	120	MOTION to withdraw objections to complaint (defts) pb
6/27 T. Hopwood		NON-JURY TRIAL (WLB) Case called for non-jury trial. Govt. present by C. Proud and Defts. Thomas L & Terry L Schuchman & Lois Schau present Pro Se. MOTION for involuntary dismissal by defts. argued and denied. ORAL MOTION to dismiss by defts. argued and denied. MOTION to withdraw objections to complaint by defts. argued and denied. MOTION to compel to produce by defts argued and allowed. Evidence presented on behalf of the Pltf. Cause is recessed until 6/28 at 9:30 a.m. pb
28 Hopwood		NON-JURY TRIAL (WLB) Evidence presented on behalf of the Pltf. Pltf. rests. Deft., Terry Lynn Schuchman, presents evidence. Cause is recessed until 6/29 at 9:30 a.m. pb
29 Hopwood		NON-JURY TRIAL (WLB) Evidence presented on behalf of the deft., Terry L. Schuchman. Deft. Rests. Evidence presented on behalf of the deft., Lois Schau. Deft. rests. Cause is recessed until 6/30 at 9:30 a.m. pb
30 Hopwood		NON-JURY TRIAL (WLB) Closing arguments presented. The Court finds in favor of Pltf. and against Defts. Govt. to prepare decree & order of sale. pb
7/6		PROPOSED Decree and Order directing sale of mortgaged property. (Pltf). pb
7-8-83	121	Letter to Judge Beatty, styled Motion to Stay (Formal request to stay the order presented to WLB on 7-8-83) Decree and Order submitted by pltf has not been signed by Judge Beatty. pf
7-12-83	122	DECREE AND ORDER DIRECTING SALE OF MORTGAGED PROPERTY-----(WLB) judgment for the pltfs and against the defts in the sum of $43,847.72 with attorney's fees and court costs with lawful interest from this date, if not paid within 3 days Marshal shall give notice and sell to the highest bidder for cash, subject to taxes, general or special - - - - See Order ---- copies to all defts., T. Schuchman, Terry Schuchman and L. Schau, copy by regular and certified mail, and Marshal's office.
	123	JUDGMENT, Clerk's, copies to all defts Book No. 5 page 52
	124	ORDER (WLB, denying "Motion to Stay" by deft. Terry Schuchman, see filing of 7-11-83, copies mailed to all defts. pf
7-18-83	125	NOTICE filed in ESL, notice signed by Terry Lynn Schuchman, attached two letters from Lois Schau, one signed and one unsigned, EOD 7-19-83 pf
7-19-83	126	NOTICE OF MARSHAL'S SALE, August 19, 1983 Federal Court House, ESL, sale of property as ordered on 7-12-83. pf

APPENDIX L-2 page 4

CIVIL DOCKET CONTINUATION 8-83

PLAINTIFF

USA

DEFENDANT

Schuchman, et al.

DOCKET NO 83-[illegible]

DATE	NR.	PROCEEDINGS
7-21-83	127	RECEIVED from CCA, Letter,with letters directed to T. Strubbe and Judge Cummings from Icis Schau, may be "notice of appeal" *** Judge B. said wait but check later with him. Calendar Sept. 2, 1983
7-21-83	128	MOTION FOR MISTRIAL AND A NEW TRIAL by Terry L. Schuchman NOTICE of hearing, Friday, Sept. 2, 1983, book, mmn
8-15-83	129	COPIES of letter to Mr. and Mrs. Schuchman submitted by USAttorney's office
8-11-83 Filed 8-11-83 EOD-8-16-83	130	MEMORANDUM (William Juergens, Senior Judge)ex parte hearing was held to determine whether or not a stay order should be granted as requested by the motion therefor submitted to this court by the plaintiff. . . . . Government has stated that it will delay the sale 60 days . . . . and if necessary, . re-publish to give the notice required by the order for publication and sal . . . . first publication, if necessary, would not be prior to 9-19-83. . . Copies of this Memorandum mailed to all parties. (Pltf. did not file motion for stay order) EOD 8-16-83
9-2-83		~~Motions heard and taken under advisement (Ref: 7-21-83), Mrs. S. handed copy~~
9-2-83	131	ORDER(WLB) motions heard and taken under advisement (ref: 7-21-83), Mrs. S. handed copy of Order
	131a	MOTION styled EMERGENCY MOTION TO STAY by Terry L. Schuchman, no notice or proposed order, requested
9-2-83	132	7-21-83 Motion Brief (submitted in Court Room 7)
10-11-83	133	MEMORANDUM (Motions taken under advisement on 9-2-83)
11-9-83	134	MEMORANDUM (Motion taken under advisement on 9-2-83)
11/21	135	MEMORANDUM (deft, Terry Lynn Schuchman)
12-9-83		MEMORANDUM (deft. Terry L. Schuchman)
1984		
1-6-84	136	MEMORANDUM (deft Terry Lynn Schuchman) filed in ESL, EOD 1-9-84.
1-12-84	137	MEMORANDUM(deft. Terry L. Schuchman) filed in ESL, EOD 1-17-84
2-2-84	138	MEMORANDUM (deft. Terry L. Schuchman) filed in ESL, EOD 2-6-84
2-9 -84	139	MEMORANDUM (deft. Terry L. Schuchman) filed in ESL, EOD 2-10-84
2/24		NOTICE of setting for 3/2/84 but to be re-set at future date after Terry Schuchman lets clerk's office which date she can be here.
2-2-84		NOTICE of Setting mailed to all parties of record, Thursday, March 29, 1984 at 12:00 noon. book and mmn

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF: U. S. A.

DEFENDANT: SCHUCHMAN, et al.

DOCKET NO. 80-5143

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DATE	NR.	PROCEEDINGS
1984		
[illegible]		MEMO in support of motion for default filed on 6/2/83 (T. Schuchman)
		STATEMENT of Facts & Affidavit (T. Schuchman)
		MOTION to damages & Counterclaim (T. Schuchman)
3/29		HEARING(WLB) Case called for motion for default against Mercantile Trust Co. Arguments heard and motion is taken under advisement.
Hopwood		
4-12-84	X	MOTION to Compel to Answer by T. Schuchman (see motion filed 3-29-84)
[illegible]		NOTICE of setting for motion to compel for 5/4/84 at 9:30 a.m. (cc:mmn/in book
5-4-84 Hop-wood)		ORDER(WLB)motion to compel heard and taken underadvisement, copies handed [illegible]r Default & Default Judgment against Pltf., filed in Courtroom (6-21-8 [illegible] damus by deft. T. L. Schuchman, copy returned to [illegible] — no notice, states copy sent to J. Juergens.
5-4-84		MEMORANDUM by TLS (on the matter of motion to damages & [illegible]claim file 3-29--84) should have been entered on docket, EOD -- 10-22-85
5-14-84		[illegible]
5/25		MEMO (Terry L. Schuchman) e AFFIDAVIT of Terry L. Schuchman e
5-1-84		MOTION to Show Cause (Terry L. Schuchman) NOTICE of Motion Setting, Friday, June 15, 1984, 9:30am.
6-5-84		ORDER(WLB) . . . we hope we have now ruled fully on the motions filed by Mrs. Schuchman. Because we considered her motion for a new trial as also being a motion to alter or amend the judgmnet, the time for appeal of this matter will commence to run from the date of this order. Accordingly, all motions filed by defendants following the decree and order directing sale of July 12, 1983 by this court must be and the same hereby ARE DENIED. CLERK'S JUDGMENT in a Civil Case, Book 6, page 39. Copies of Order and Clerk's Judgment mailed to all parties F SI-1 for Chicago and x820 CASE CLOSED JS-6a F
6-7-84		EMERGENCY MOTION TO STAY, by Terry L. Schuchman, filed in ESL, recd in Alton 6-8-84, EOD 6-8-84 MOTION to Vacate Order Dated June 5, 1984 by Terry L. Schuchman, filed in ESL, recd in Alton 6-8-84, EOD 6-8-84.
6-12-84		NOTICE (Terry L. Schuchman)filed in ESL, recd. in Alton 6-13-84 MOTION to Vacate Decree Entered July 12, 1983 (Terry L. Schuchman) EOD 6-13-84
6-13-84		ORDER(WLB) denying "Emergency Motion to Stay" filed by Terry L. Schuchman Pro Se defendant on 6-7-84 EOD 6-13-84, copies mailed ORDER(WLB) denying Motion to Vacate Order Dated June 5, 1984 filed by Pro Se defendant on 6-7-84, EOD 6-13-84, copies mailed ORDER(WLB) denying "Motion to Vacate Decree entered 7-12-83", EOD, 6-7-84, copies mailed.

DATE	NR.	PROCEEDINGS
1984		
5/29		MEMO in support of motion for default filed on 6/2/83 (T. Schuchman)
		STATEMENT of Facts & Affidavit (T. Schuchman)
	140	MOTION to damages & Counterclaim (T. Schuchman)
5/29		HEARING(WLB) Case called for motion for default against Mercantile Trust Co. Arguments heard and motion is taken under advisement.
Attorney Vass II of record		
5-12-84	141X	MOTION to Compel to Answer by T. Schuchman (see motion filed 3-29-84)
5/18		NOTICE of setting for motion to compel for 5/4/84 at 9:30 a.m. (cc:mmn/in book)
5-4-84	142	ORDER(WLB)motion to compel heard and taken underadvisement, copies handed
5-7-84	143	REQUEST for Default & Default Judgment against Pltf., filed in Courtroom(6-21-84
5-10-84	144	REQUEST for Writ of Mandamus by deft. T. L. Schuchman, copy returned to Mrs. Schuchman -- no notice, states copy sent to J. Juergens.
5-14-84	145	MEMOrandum by Terry L. Schuchman
5/29	146	MEMO (Terry L. Schuchman)
	147	AFFIDAVIT of Terry L. Schuchman
5-2-84	148	MOTION to Show Cause (Terry L. Schuchman)
		NOTICE of Motion Setting, Friday, June 15, 1984, 9:30am.
5-8-84	149	ORDER(WLB) . . . we hope we have now ruled fully on the motions filed by Mrs. Schuchman.. Because we considered her motion for a new trial as also being a motion to alter or amend the judgmnet, the time for appeal of this matter will commence to run from the date of this order. Accordingly, all motions filed by defendants following the decree and order directing sale of July 12, 1983 by this court must be and the same hereby ARE DENIED.
	150	CLERK'S JUDGMENT in a Civil Case, Book 6, page 39.
		Copies of Order and Clerk's Judgment mailed to all parties
		SI-1 for Chicago and x820
		CASE CLOSED
		13-6a
5-7-84	151	EMERGENCY MOTION TO STAY, by Terry L. Schuchman, filed in ESL, recd in Alton 6-8-84, BOD 6-8-84
	152	MOTION to Vacate Order Dated June 5, 1984 by Terry L. Schuchman, filed in ESL, recd in Alton 6-8-84, BOD 6-8-84.
5-11-84		NOTICE (Terry L. Schuchman)filed in ESL, recd. in Alton 6-13-84
	153	MOTION to Vacate Decree Entered July 12, 1983 (Terry L. Schuchman) BOD 6-13-84
5-11-84	154	ORDER(WLB) denying "Emergency Motion to Stay" filed by Terry L. Schuchman Pro Se defendant on 6-7-84 BOD 6-13-84, copies mailed
	155	ORDER(WLB) denying Motion to Vacate Order Dated June 5, 1984 filed by Pro Se defendant on 6-7-84, BOD 6-13-84, copies mailed
	156	ORDER(WLB) denying "Motion to Vacate Decree entered 7-12-83", BOD, 6-7-84, copies mailed.

DATE	NR.	PROCEEDINGS
6-15-84	157	MOTION to Correct the Record and REQUEST for Appointment
	158	ORDER(WLB) denying Motion to Show Cause filed June 1, 1984 by deft., copy handed to Mrs. Schuchman and mailed to all parties. EOD 6-15-84
6-18-84	159	MOTION to Vacate Orders entered June 13, 1984 and MOTION to Recuse by Terry L. Schuchman with affidavit of Terry L. Schuchman --- EOD 6-18-84 (filed in ESL office, recd 6-18-84)
	160	MOTION to Vacate Decree entered June 5, 1984 by Thomas L. Schuchman -- EOD 6-18-84 (filed in ESL office, recd 6-18-84)
		Proposed Notice of Setting, for all motions filed 6-15-84, Friday, July 6, 198- (check with Judge)
6-20-84		ADVISED U. S. Atty and Mrs. Schuchman by telephone of setting for oral argument of motions filed 6-15-84, FRIDAY, JUNE 22, 1984 at 1:30pm. Sent notice to Mr. Schuchman, copies to other parties.
6-21-84	161	CLERK'S DENIAL(AWH) of Request for Entry of Default (as to def. Terry L.Schuchm copies mailed. EOD - 6-21-84 Ref: 5-4-84
6-21-84		NOTICE OF MARSHAL'S SALE ---- on the 7th day of August, 1984, East St. Louis, I at 12:00 noon (issued by Marshal Nettles) filed in ESL, RECD 6-22-84, EOD 6-22-84.
6-22-84		NOTICE OF MOTION SETTING, (Motions filed 6-15-84), Friday, 7-6-84 at 9:30am in Alton. book and mm (these were to be heard,6-22-84)
6/22 Ba Hopwood		HEARING(WLB) Arguments heard on pending motions. Written order to be submitte
6-25-84		REQUESTS to Clerk, filed in ESL, recd in Alton 6-26-84, EOD 6-26-84
	161A	REQUEST for Writ of Mandamus, filed in ESL, recd in Alton 6-26-84, EOD, 6-26-84
	162	MOTION To Vacate Order Made June 15, 1984 and To Vacate Order Entered June 5, 1984 . (Item 25 states Exhibits attached, Exhibits were tendered by deft. at hearing on 6-22-84, in Exhibit file, deft. asked by telephone that they be removed and attached to this motion) filed in ESL 6-25-84, recd in Alton, 6-26-84, EOD 6-26-84
6-27-84	163	ORDER(WLB) ruling on motions presented June 22, 1984 at oral argument --- Motion to Correct the Record and Request for Appointment of Sp. Pros. filed 6-15-84 - - - DENIED Motion to Vacate Orders Entered June 13 ~~and June 15, 1984~~ DENIED Motion to Vacate Decree Entered June 15, 1984 --DENIED MOTION to Vacate Decree Entered June 5, 1984 -- DENIED MOTIONS to Make More Definite and Certain, being Exhibit B and G --DENIED MOTION to Recuse -- DENIED Copies mailed to all parties of record
	164	ORDER(WLB) that Motion filed 6-25-84, Motion to Vacate Order Made June 15, 1984 to Vacate Order entered June 5, 1984 has been considered and it is now DENIED. Copies mailed to all parties of record.

See Next Page

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CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO 80-5143
United States of America	Thomas L. Schuchman, et al.	PAGE 13 OF ___ PAGES

DATE	NR	PROCEEDINGS
-6-84	165	MOTION to Compel Disqualification of Judge Beatty by deft. Thomas L. Schuchman Affidavit attached (7-5-84)
	166	MOTION to Compel to Product Written Ruling on Administrative Review Conducted by deft. Thomas L. Schuchman (7-12-84) Filed in ESL, Recd in Alton 6-29-84 - BOD 6-29-84 pf
-8-84	167	ORDER(WLB) DENYING Motion to Compel Disqualification of Judge Beatty by deft. Thomas L. Schuchman, copies mailed. BOD 7-5-84 pf
-9-84	168	MOTION for Rehearing, Reconsideration and to Vacate by Thomas L. Schuchman no notice, no proposed order (Recd in Alton 7-6-84) (7-12-84) pf
-11-84	169	AFFIDAVIT of Thomas L. Schuchman.
	170	STATEMENT of Facts by Thomas L. Schuchman
	171	MOTION to Compel to Vacate to Legal Error and Failure to Disqualify by Thomas L. Schuchman
	172	AFFIDAVIT by Terry L. Schuchman (Ref: 7-12-84, all pleadings) Notice of Motion Setting by T. L. Schuchman, Aug 3, 1984 --- not motion day, no motions heard in August pf
-12-84	173	ORDER(WLB) denying "Motion to Compel to Produce Written Ruling on Administrative Review Conducted."filed by T. L. Schuchman, copies mailed, BOD 7-12-84
	174	ORDER(WLB) denying "Motion for Rehearing, Reconsideration and to Vacate" filed by T. L. Schuchman on 7-5-84, copies mailed, BOD 7-12-84
	175	ORDER(WLB) denying all motions filed on 7-11-84, copies mailed, BOD 7-12-84 p
16	176	MOTION timely made to compel disqualification of Judge Beatty w/affidavits in support (pltfs Schuchman) (REF. 7-27-84) rl
		Notice to defts, oral argument, Friday, July 27, 1984 at 9:30am pf
,27	177	MOTION for the awarding of attorney's fees and costs (USA)
	178	REQUEST to Stipulate (Terry Schuchman) pf
,27 Haywood		HEARING(WLB) USA's Motion for the award of attorney fees heard and taken under advisement. ORAL MOTION to extend appeal time (Terry Schuchman) DENIED. MOTION timely made to compel disqualification of Judge Beatty heard and DENIED. ORAL MOTION for Security for costs pursuant to Local Rule 2c (USA) (to be submitted in writing) pf
-27-84 (Rec'd in ESL)	179	NOTICE of Appeal by Thomas L. and Terry Lynn Schuchman. (from final judgment denying motion for mistrial and new trial, dismissing with prejudice counterclaims, and request for writ of mandamus for abuse of discretion entered on 6-5-84)
	180	EMERGENCY MOTION TO STAY AND FOR WAIVER OF SUPERSEDEAS BOND by defts ---- all pleadings filed in ESL, recd in Alton 7-30-84, BOD 7-30-84 pf

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CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. 80-[illegible]
USA	Thomas L. Schuchman, et al.	PAGE 14 OF ____ PA

DATE	NR.	PROCEEDINGS
7-30-84		Letter to all parties about Notice of Appeal (Transcript form for defts) SHORT RECORD to CCA ----- Record due on 8-10-84 x820
8-1-84	181	PLTF'S Response to Defts' Motion to Stay and Waiver of Supersede Bond and Memo in Support of
8-3-84	182	ORDER(WLB) Motion filed 7-27-84 for stay and to waive a Supersedeas Bond is DENIED, as requested by WLB, called CCA, USA and Mr. & Mrs. Schuchman at 9:30am to inform of Judge's ruling, neither deft. at home, person answering telephone identified herself as Mrs. Schuchman's daughter, stated she did not know where her mother was, her father was at work and at my request said she would call her father and tell him I would like to speak to him as soon as possible. copies mailed at 12:00 noon as instructed by WLB. EOD, 8-3-84
**********		See below for filings by defts in ESL on 8-3-84
8-6-84	183	Appearance and Certificateof Interest to the U. S. Court of Appeals for the Seventh Circuit (copy submitted for filing by mail) (signed by TLS, 8-4-8
	184	DESIGNATION OF RECORD by Terry L. Schuchman (recd in mail, styled Request to Clerk Specifying Items Required to Be Included in Record, Exhibits, All Miscellaneous Procedural Pleadings)
	184-a	DESIGNATION OF RECORD by Terry L. Schuchman (recd in mail, styled Request to Clerk Providing Exhibits to be Lodged on Appeal)
8-3-84	(filings in ESL)	
		COUNTERMOTION to the Motion of the USA for the Awarding of Attorneys' Fees and Costs (Ref: 7-27-84 by USA) with MEMO
		REQUEST for Pltf to Prepare Statement of Evidence and Correct Ommissions and Misstatements (2-14-80)
	185	REQUEST to Transmit Entire Original Record and All Exhibits Minus Transcripts (See Designation of Record filed 8-6-84 in Alton)
	186	DEFTS' Response to Pltf's Response to Defts Motion to Stay and Waiver of Supersedeas Bond and Memo in Support All pleadings by Thomas and Terry Schuchman, filed in ESL, RECD in Alton, 8-7-84, EOD 8-7-84)
		REQUEST to Dispense with Appendix and Permit Appeal to Be Heard on Original Record at Cost to Pltf, filed in ESL, EOD, 8-7-84, STRICKEN and RETURNED to Deft - pleadings should be mailed directly to CCA.
		BRIEF Special Seperately Designated Part, filed in ESL, EOD 8-7-84, STRICKEN and RETURNED to Deft - pleadings should be mailed directly to CCA.
		APPEARANCE and Certificate of Interest to the United States Court of Appeals for the Seventh Circuit, filed in ESL, EOD 8-7-84, STRICKEN AND RETURNED to Deft -- pleadings should be mailed directly to CCA.
		STATEMENT OF ISSUES, FILED IN ESL, EOD 8-7-84, STRICKEN AND RETURNED to Deft. pleading should be mailed directly to CCA.
		~~MEMORANDUM, C ounterm otion Pursuant to Rule 11, filed in ESL, EOD 8-7-84, STRICKEN and RETURNED to Deft. pleading should be mailed directly to CCA.~~ see first listed filing.

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. 80-5143
United States of America	Thomas L. Schuchman, et al.	PAGE 15 OF ___ PAGES

DATE	NR.	PROCEEDINGS
-20-84		RECORD Prepared, 4 volumes of pleadings, /4/ envelope of Exhibits, original record on appeal is retained in the Clerk's Office pursuant to Fed. R. App. P 11(c) pf
-9-84		MARSHAL's Return of Sale
		NOTICE of Designation of Record by USA (entire record on Appeal) pf
-13-84		Copy of Appearance Form from CCA, Docketed 8-6-84, No. 84-2322 pf
-20-84		RECD copy of ORDER of CCA, dated 8-7-84 DENYING Emergency Motion to Stay and for Waiver of Supersedeas Bond, EOD 9-10-84 pf
-3-84		MOTION to Compel with attachments, copy mailed to TLS with receipt for $.50. pf
-12-84		RECD copy of ruling by CCA entered on 9-5-84, see order pf
25-84		REQUEST to Interlocutory Appeal and To Correct the Record with Memorandum, (attachment, copy of affidavit of claim submitted to CCA) with proposed order
		NOTICE of setting, Friday, Oct. 19, 1984 pf
-84		ORDER(WLB) denying Request to Interlocutory Appeal and to Correct the Record with Memorandum filed on 9-21-84. copies mailed pf
-84		NOTICE of Motion Setting, Motion to compel, filed 7-27-84 and Motion to Compel filed 9-5-84 set for oral argument on Friday, 11-2-84, book and mm pf
-84		MOTION to Amend and Join as Necessary Parties by Terry L. Schuchman (Judge's Office instructed, since this case is on appeal, Judge will not hear oral argument, advised Mrs. Schuchman) pf
-84		ORDER(WLB) that we have jurisdiction to order that our court reporter not prepare the transcript as it has been requested by deft. . . . Court Reporter Teri Hopwood is therefore ORDERED not to transcribe the statements requested by deft. on October 22, 1984. copies to all parties, Teri Hopwood and CCA. pf
-84		CCA Transcript Information Sheet from Court Reporter, request for transcript of Motion hearing on 6-3-83 will not be furnished, no court reporter present in Courtroom at hearing. pf
84		CCA Transcript Information Sheet received from Thomas Schuchman, not completed by Court Reporter. pb
84		COMPLETED Transcript Inf. Sheet recd from Ct. Reporter, see 11-2, no record made p
		ORDER(WLB) that the clerk of this Court receive documents but not file them. The clerk shall mark said documents recd and the date they are recd and place them in a separate folder to be retained but they shall not be file-marked or included in the official court file. copies to all counsel's parties, CCA and pf

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CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO 83-3141
USA	Schuchman, et al.	PAGE 1 OF ____ PAGES

DATE	NR.	PROCEEDINGS
11-16-84		ORDER(CCA) . . . . appellant shall comply with the designation of record and transcript requirements on or before 11-23-84 or this appeal shall be dismissed for failure to prosecute. . . . . Appellant shall file a status report with this court on or before 11-26-84 indicating that the required documents, a designation of record and request for transcripts have been submitted to the district court. . . . .
11-19-84		Seventh Circuit Transcript Information Sheet recd from Court Reporter and forwarded to CCA (for hearings on 11-29-82; 2-18-83 & 3-18-83)
11-21-84		Seventh Circuit Transcript Information Sheet recd from Court Reporter and forwarded to CCA (for trial, 6-30-83, requested Closing statements of Judge Beatty)
12-11-84		RECD transcripts from Court Reporter, hearings on November 29, 1982 and June 30, 1983 (2 each) (added to record)
12-13-84		RECD transcripts from Court Reporter, hearing on March 18, 1983 and hearing on February 18, 1983
12-17-84		Notice of Defect in Record (from T. L. Schuchman)
1-3-85		RECD from Court Reporter, correction of transcripts , see entry of 11-17-84
2-7-85		UNITED STATES MARSHAL'S REPORT OF SALE
2-11-84		ORDER(WLB) Decree Confirming United States Marshal's Report of Sale, copies mailed.
2-21-85		CCA Transcript Information Sheet filed by Court Reporter, for request of Thomas Schuchman, hearing on 7-27-84, Court Reporter will file 3-19-85. Copy to CCA.
3-5-85		PETITION for Order Directing Clerk to Issue a Writ of Assistance with proposed order and writ of assistance ---- Copy of Petition sent Express Mail and copy sent regular mail to Terry Schuchman as instructed by WLB. Telephone call to Terry Schuchman, as instructed by WLB, to inform her WLB would hear arguments on 3-8-85 at 12:00 noon. Mrs. Schuchman advised she can not appear without 10 days notice of hearing.
		NOTICE of hearing, Friday, 3-8-85, 12:00 noon, copies to all parties, mmn and black book
3-8-85		TRANSCRIPT, partial, findings of fact and conclusions of law on 7-27-84 FILED BY SPECIAL ORDER(WLB)
		MOTION to Recuse J. Beatty made prior to Hearing ordered 3-8-85 and claiming fair hearing cannot be made due to continued denial of due process and equal protection by same said Judge William L. Beatty ---DENIED IN OPEN COURT AT HEARING
		MOTION to strike "Mercantile Trust Co., as a named defendant in original [illegible]

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CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO 80-5143
United States of America	Thomas L. Schuchman, et al.	PAGE 17 OF ____ PAGES

DATE	NR.	PROCEEDINGS
1985		
-8-85		FILED BY SPECIAL ORDER OF WLB: LETTER from Lois Schau addressed to Jim Thompson, Director, SBA with attachments. DENIED in open court at hearing
3-8-85		HEARING on Govt's PETITION for Order Directing Clerk to Issue a Writ of Assistance, C. Proud for USA, Terry L. Schuchman, pro se and Lois Schau, pro se present, Judge will rule on Petition 3-15-85 pf
-11-85		Seventh Circuit Transcript Information Sheet filed by Court Reporter, transcript of Trial, 3 days to be completed 5-20-85, copy to CCA. pf
-14-85		PETITION for An Order Directing Clerk to Deny Plaintiff-Appellee A Writ of Assistance Pending Ruling On Motion to Vacate Decree Confirming Marshal' Sale Alleging Failure to Conform to Fair Sale Laws of Illinois - filed copy returned to TLSchuchman pf
-15-85		ORDER(WLB) to issue Writ of Assistance to the U.S.Marshal in possession of the premises described in Complaint and to maintain and defend its possession. copies to all parties and USMarshal(Ref:3-5-85)
		WRIT OF ASSISTANCE issued to Marshal, copies to all parties pf
-11-85		APPEARANCE FORM form CCA, (85-1411, Emerg. Writ filed direct with CCA) docketed 3-18-85, Writ DENIED by CCA 3-18-85 info only. pf
-15-85		MOTION TO VACATE DECREE CONFIRMING MARSHAL'S REPORT OF SALE entered 3-11-85 for Wilful Failure to Conform to the Truth. (filed per WLB) pf
/19		EMERGENCY motion for certification (deft pro se)
		EMERGENCY motion for order (deft pro se) rb
-1-85		MOTION to compel USA to provide pro se transcript (free of charge) pf
		(Judge said do not file, marked Recd.) pf
-17-85		TRANSCRIPT of non jury trial, 6-27 and 6-28, 1985, book 1 of 3, 1-123; book 2 of 3, 124 to 320; book 3 of 3, page 321 pf
-19-85		RETURN of service by Marshal, personal service of Writ of Assistance on 3/21/85 (Thomas L. Schuchman)
		RETURN of service by Marshal, personal service of Writ of Assistance on 3-21-85 (Terry L. Schuchman) pf
-19-85		NOTICE of Hearing, Thursday, July 25, 1985, 11:00am pf
/25		TRANSCRIPT of deft's exhibits
		PETITION to reopen and grant summary judgment(Schuchmans)
		MOTION to compel & produce (Terry Schuchman) (Denied on record) pb
25		HEARING(WLB) Hearing called on document RECEIVED 7-18-85. Motion is denied.

Rep-mc

DATE	NR.	PROCEEDINGS
7-31-85		RECD ORDER from CCA, pursuant to Rule 4(a1) the record is to be transmitted to the Clerk's Office of this Court immediately, dated 7-26-85, recd 7-31-85, EOD 7-31-85 x820
7-31-85		RECORD mailed to CCA, 4 volumes Pleadings, 8 volumes Transcripts and 4 envelopes Exhibits
8/26		RECEIPT for record at CCA on 8/5/85
10-28-85		SUPPLEMENTAL RECORD to CCA (filing of Mrs. Sch. on 5-4-84, Memorandum)
11-1-85		2nd SUPPLEMENTAL RECORD to CCA (filings of 9-25-84 and 9-28-84)
11-4-85		3rd SUPPLEMENTAL RECORD to CCA (filings of 6-25-84 and 8-6-84) filing of March 29, 1984 **MOTION TO DAMAGES AND COUNTERCLAIMS** included in original Record, **VOL III, number #140.** x820
11-8-85		ORDER(CCA) court on its own motion VACATES that part of its order of 10-31-8 dated 11-4-85.
11-8-85		ORDER(CCA) #84-2322 and #85-2348 ----- AFFIRMED IN PART AND DISMISSED IN PART, dated 11-6-85, EOD 11-8-85 x820
11-21-85		PER MR. HELART THIS DAY --- all correspondence to Mrs. Schuchman shall be **by certified mail, addressee only with Return Receipt Requested.**

FOOTNOTES

1/ Appelle Brief served June 20, 1985 in 84-2322 page 6 paragraph three begins: "In their answer to the complaint, the appellants failed to deny any of the allegations contained therein...". Certified copy of "Reiterative Answer" of Thomas L. Schuchman filed Feb 7, 1983; "Objections to Complaint" by three defendants Thomas L. Schuchman, Terry Lynn Schuchman and Lois C. Schau filed February 24, 1983 and ordered filed as answers in Court order entered April 28, 1983 clearly evidences denials made and are appended hereto as Appendices A, B, and C respectively. Exhibits referred to in "Reiterative Answer" were admitted 11-29-82 (TR 10 et seq, 18 et seq) and appear in file July 12, 1982 certified to 7th Circuit as District Court Document #22. "Reiterative Answer" certified as district court document # 43, Objections to Compliant" certified as district court document # 53, Court Order April 28, 1983 certified as district court document # 68. Relevant portions of Appellee Brief served June 20, 1985 in 84-2322 appended hereto as APPENDIX D for purview of falsity to conceal lack of substantial evidence in district court case 80-5143.

Listing of the parties pursuant to Supreme Court Rule 21.1.(b) follows:

Thomas L. Schuchman	individual SBA borrower
Terry Lynn Schuchman	wife of individual borrower
Lois C. Schau	Senior Mortgage Holder, by written permission SBA, mother of Terry Lynn Schuchman
USA	by AUSA Clifford J. Proud U.S. ATTORNEY Frederick J. Hess
SBA Administrators, Et Al	by William A. Krajec, SBA Counsel
First National Bank of Belleville	by Attorney Brad A. Badgley
St. Louis Telephone Employees Credit Union	by Attorney H. Gary Apoian
Mercantile Trust	by Debbie Foreman, Attorney
Lynne Murphy	third party intervenor by Gomric & Kurowski, P.C. Attorneys at Law, also secretary to James J. Gomric Attorney at Law

Martin Gomric Jacqualine Gomric	unnamed, plaintiffs, joint tenants, purchasers of SBA direct loan to Thomas L. Schuchman/DBA Colonial Barber Shop, builder of disputed property, residence of Thomas L. Schuchman, Terry Lynn Schuchman, and minor child Tracia Lorie Schuchman, said also securing indebtedness to Lois C. Schau by reason of SBA request and inital refusal to grant statutory allonge on SBA direct loan of borrower Thomas L. Schuchman, aunt and uncle to attorney James J. Gomric, original sellors, by contract prepared by Attorney James J. Gomric in July 1970, to buyers Thomas L. Schuchman and Terry Lynn Schuchman, joint tenants, possible assignees, two mortgages in question, by bearer document, said document executed by Third party intervenor Lynne Murphy to obtain Marshal's Deed issued October 26, 1982 and then set aside by district court at hearing 11-29-82, order issued 12-14-82, and duly recorded 12-16-82 in St. Clair County Recorder's Office, Said Marshal's Deed possible basis for initiating state action F E & D 82-LM-1278 if parties are the real parties at interest basing claim for F E & D on purchase money mortgage July 1970 paid in full, but never released.

2/ Plaintiff's Exhibit I is included in Appellee Brief served June 20, 1985 in 84-2322 and is appended hereto as a portion of APPENDIX D. It is the letter of acceleration and demand alone with no formal authority included as required pursuant to SBA SOP Section 50 No. 50 Rev 3 pages 72, 73 and 74 with its 2 page Appendix 16, pages 251, 252. For full details see note 3 below.

3/ Defendant's Exhibit II at trial included all SBA Standard Operating Procedures. (Trial Transcript)

et seq. Relevant parts thereof are appended hereto as APPENDIX E and are identified throughout by page numbers which appear in lower right hand corners of APPENDIX E, in this instance Section 50 No. 50 Rev 3 pages 72, 73, and 74 with its two page Appendix 16, pages 251, 252. "The acceleration and demand letter officially "calls the loan" and is an act of liquidation. It should not be issued until formal authority to liquidate has been obtained."

4/ Illinois Revised Statutes Paragraph 23.6-2 $ 7.2 was in effect on date (6-23-80) plaintiff's complaint was filed and is appended hereto along with paragraph 57. $ 7 as APPENDIX F.

5/ See note 3 above. APPENDIX E appended hereto page 74 paragraph 57. e. et seq . Borrower requests additional deferment 8-23-79 letter appended hereto as APPENDIX H page 2 (TR p264, 125) acknowledges reciept and advises borrower he will receive written notification pursuant to 5 USC $ 555(e). After no response to 2-20-80 financial statement (DEF EX M at trial (TR 183, 345)) borrower again makes request in 4-24-80 letter, Plaintiff's Exhibit K at trial (TR 59, 60, 346) appended hereto as APPENDIX H. Plaintiff fails to produce loan report showing due consideration (TR 205, 449) Motion to Show Cause appended hereto as APPENDIX I. Motion to Compel to Produce filed prior to trial and granted June 27, 1983 is appended hereto as APPENDIX X.

6/ Defendant's Exhibit N at trial (TR 321, 326, 437) identified on Exhibit and Witness list as 4 pages--payment of 10-20-79 (Note & Money Order) contains letter 7-25-79 advising requested deferment granted, signature of Marjorie L. Casey appears with initals S. L. underneath, states: "Your requested deferment has been approved by this Agency..." 327 authorization states: "Borrower ...have (SIC) had problems beyond their (SIC) control. Their (SIC) road is an access road to Highway 159. Highway 159 has been under construction and getting to the borrower's place of business has been somewhat obstructed. Because of this access to their (SIC) business, the severe winter weather (President declared disaster area), ice storms, the borrowers (SIC) are requesting a deferment of 6 months payments of principal and interest." Letter 7-25-79 makes no statement as to beginning and ending dates of deferment or date as to when repayments should resume. Borrower is under impression 2 month deferment for Nov and Dec 1978 was 6 months. See Plaintiff's Exhibit H (TR page 39 lines 21, 22, 23) second page, which states: "Payments on loan have been deferred until early December." and is signed by Thomas E. Poole Regional Financial Analyst 10/27/78. Third page states: "I feel that there is a chance they will make it with some management assistance. In any case we seem to be adequately secured and they do need the additional money to keep above the water." and is signed by Regional Director for Finance and Investment Larry Cherry. Copies of Plaintiff's Exhibit H provided to defendants at trial are appended hereto as APPENDIX G. Defendant's Exhibit N

at trial is appended hereto as APPENDIX G-1 pagers 1, 2, 3, 4. It should be duly noted counsel for plaintiff was allowed to remove original plaintiff's exhibit H and substitute copoies therefore (TR page 58 lines, 12, 13, page 63 line 9, page 75, page 78 line 11 et seq ad finim). Said copies being illegible. District court at hearing June 22, 1984 to correct the record claims it can readily read said copies. See reply brief filed 7-2-85 in 84-2322 Statement of Errors page 32 # 31 & # 32 et seq.

7/ Portions of Appellee Brief served June 20, 1985 in 84-2322 appended hereto as APPENDIX D. See also notes 1 & 2 above.

8/ 7th Circuit panel in its order Nov 6, 1985 page 3 last 8 lines of second paragraph is clearly erroneous. It states: "The SBA was clearly authorized to declare Schuchman in default, accelerate the maturity of the note and foreclose on the second mortgage where it held both first and second mortgages." SBA did not hold both the first and second mortgages on 2-14-80 when it allegedly accelerated the maturity of the SBA note. See portion APPENDIX D hereto page 4: "On May 29, 1980, SBA purchased the first mortgage on the Schuchman property (home) from First Federal Savings and Loan of Mascoutah for $24,252.58 and received an assignment of First Federal's note and mortgage." Complaint alleges default thereon but offers no proof at trial. Nor did plaintiff offer any proof of formal authority to issue said demand on 2-14-80. District court in its VERDICT (TR page 5 lines 19, 20) admits: "there was no substantial evidence to support their (SBA) decision." 7th Circuit panel is also clearly erroneous, in its Nov 6, 1985 order page 5 Footnote 4, on the date of submission of "Motion to Allow Correction of Ommissions (SIC) and Misstatements". Said was originally filed in district court on August 3, 1984 after district court took same under advisement September 2, 1983 and delayed no less than 9 months, then made no ruling whatsoever, claiming only Motion for Mistrial and A New Trial is "verbose and rambling" in its June 5, 1984 order from which appeal is taken. # 3 said motion conclusions seeks "judicial review" and said was included in short appendix to Appellant's Main Brief filed 9-19-84 in 84-2322. Certified District court document # 125. Request to Supplement the record with transcript by affidavit re 9-2-83 hearing is denied by 7th Circuit as CCA plays "word games" and carefully avoids supplementing record with said 3 page affidavit, appended hereto as APPENDIX L. Order 6-5-84 is appended hereto as APPENDIX L-1. Motion for Mistrial and a New Trial is appended hereto as APPENDIX L-2. Appended hereto as APPENDIX W is a copy of page 449 Black's Law Dictionary re due process clause et seq and it is signed by Thomas L. Schuchman and appears in both district court and 7th Circuit court file numerous times appended to various requests. (TR PAGE 467 LINE 14 ET SEQ)

9/ See note 3. SOP Section 50. No. 50 Rev 3 page 61 paragraph a 61. a. et seq. appended hereto as portion of APPENDIX E. The basic purpose of a deferment is to enchance the borrower's cash flow, trade credit, etc. and thereby improve the likelihood of further payments to SB A in the long run--a short run penalty for a long run benefit." SBA was argumentative and capricious in its consideration of deferment requests. See appended hereto APPENDICES G et seq, H et seq, inter alia.

10/ Plaintiff's Exhibit k (TR 59, 60) borrower's letter 4-24-80 to SBA, requesting what happened to his deferment, requested in writing August 23, 1979, and acknowledged in letter 10-11-79 from SBA signed by Shelia M. Valdez, is appended hereto as APPENDIX H page 2. It was also defendant's exhibit G at trial but misplaced by clerk, exhibit and witness list has scratched out. 10-11-79 letter is ap pended hereto as page two APrENDIX H. (TR page 346 line 25, page 347 line 7 et seq

11/ See notes 3 and 9. SOP Section 50 No. 50 Rev 3 pages 61, 62 et seq appended hereto as APPENDIX E. Borrower made written request 8-23-79 and sought reconsideration at next level 10-8-79 when Springfield SBA made no written response. 10-11-79 letter appended hereto as APPENDIX H page 2 is only written response. 2-20-80 (TR 208, 209) borrower again submits request and again no written response thus 4-20-80 letter appended heretto as APPENDIX H page 2 and also Plaintiff's Exhibit k at trial (TR 59, 60).

12/ Plaintiff's Exhibit L at trial. (TR 205 line 1 et seq. 60) which is 4-28-80 letter copy chowing no affidavit, or sworn testimony offered in support of the existence of any 327 loan authorization sn such determination. Plaintiff(s Exhibit K appended hereto as APrENDIX H has written note acknowledging receipt of response 2-20-80.

13/ 327 loan authorization #4 apparently considered by 7th Circuit in its order Nov 6, 1985 page 3 lines 24 and 25 "added two months to the second deferment" but not a part of Plaintiff's original trial exhibits. Defendants did attach it to various pleadings and at one time identified it as Exhibit HHHH." Said copy is appended hereto as APPENDIX I. Signed answers to written interrorgatories claim borrower was advised by phone that said deferment was granted, but 5 USC 555(e) requires denial to be in writing and August 23, 1979 written request was for 6 months, and response letter 10-11-79 states borrower will receive an answer in writing. See appended hereto as APPENDIX A-2 borrower's motion for reconsideration to CCA denied for non-compliance with Standard Operating Procedure of CCA. See Public Law 489, 92nd Congress, 2nd Session, 8 6 STAT 807 which sets forth general principals and minimum standards to be observed in formulating any local rules. The record is not sufficient in that transcripts of proceedings October 21, 1981, June 3, 1983, and September 2, 1983 were not settled and aprroved by district court at hearing 7-25-8 5 pursuant to Federal Rules of Appellate Procedure Rule 10(c) and district court refused to even file motion for same submitted July 18, 198 5. See appended

hereto APPENDIX L et seq, affidavit by transcript of proceedings September 2, 1983 inter alia. All the evidence should be allowed. United States vs Nixon.

14/ See notes 1 and 2 above. APPENDIX D appended hereto, page 6, first paragraph; page 3, footnotes 1, 2, 3, and footnote 5 page 4 of APPELLEE BRIEF served June 20, 1985, relevant portions appended hereto as APPENDIX D for purview of falsity and lack of substanceial evidence.

15/ Defendant's Exhibit U at trial (TRp 225 line 18, p 226 et seq; p 216 line 3) appended hereto as APPENDIX K et seq was also submitted attached in motion for consideration of jurisdiction of district court resulting in CCA order January 30, 1985 appended hereto as APPENDIX J.

16/ Defendant's Exhibit V (TR page 199, line 22, page 202 line 4 et seq, admitted line 16, page 228 line 17 et seq, page 436 line 25 et seq) at trial. (TR 435 line 17) appended hereto as APPENDIX A clearly shows 0 balance owing SBA.

17/ Plaintiff's Exhibit G at trial (TR 40)58) appended hereto as APPENDIX M. Said loan authrization at 5.(e) incorporates SOP's into agreement. (TR 217 line 10). Said SOP's Defendant's Exhibit I at trial. (TR page 440 line 22 et seq page 345 line 21 et seq. page 331 line 4 et seq therein. page 108 line 15, page 110 line 12 et seq) appended heretto as portion of APPENDIX E see note 3 above.

18/ Plaintiff's Exhibit F at trial. (TR 65, 66) See also notes 1 and 2 above. Appended hereto as part of APPENDIX D see footnote 3 page 3 et seq therein.

19/ Plaintiff's Exhibit H at trial (TR 40). See also note 6 above. (TR 58 lines 12, 13, 14, et seq. Appended hereto as APPENDIX G et seq. See also note 3 above. SOP Section 50 No. 50 Rev 3 pages 155, 156, 157, 158, 159, 160. Management Assistance should be considered on refinanced and/or additional loans. Page 3 Plaintiff's Exhibit H appended hereto as APPENDIX G clearly prescribes management assistance but Springfield SBA lines it out and refuses to provided Program 408 to borrower. (TR 83 line 18 et seq) Court is clearly erroneous (TR p 457 line 14. Authority to accelerate is required to issue demand letter and it has everything to do with this cause, if it (2-14-80) is incorrect, has ommissions, and does not follow procedure then the decision is insufficiently supported by the evidence.

20/ Plaintiff's Exhibit K (TR 60) appended hereto as APPENDIX H page 1.

21/SOP Section 50 No. 51 Rev J pages 126.9 and 126.10 appended hereto as part of APPENDIX E. See also note 3 above. Page 27 of the June 1985 Money magazine states: "Among the most debated points in the Reagan Administration budget cutting plan is its plan to abolish the 32 year old Small

Business Administration or at least repeal its authority to guarantee loans to struggling entrepreneurs. Last year the SBA dispensed $3.2 billion in loans to 82,000 new and existing firms." A june 30, 1985 Globe Democrat news article quotes former OMB Director David Stockman in a closed door speech to New York Stock Exchange directors June 5, 1985 "Stockman also critized government accounting practices, saying "if the SEC had jurisdiction over the executive and legislatvie branches, (see also accounting article appended hereto as APPENDIX O page 2) many of us would be in jail." A Belleville News Democrat news article in early May 1985 with dateline WASHINGTON(AP) reiterates declared policy of Congress "to aid, counsle, assist and protect small business" and quotes Stockman's reference to the SBA as a "rat hole". Documented cases of SBA "rat hole" are contained in Memorandum filed Feb 9, 1984 dictrict court 80-5143 document # thoase being an award winning series of newspapers articles in the Golve Democrat in October of 1981. Said memorandum also notes the notation on Dockett 80-5143 in October of 1981 "carry on non-jury docket---- U.S. waiting for opinion." Publick Law 97-72 enacted November 3, 1981, 95 STAT1056 at (e)(1) states: "upon application by a veteran's small business concern..." et seq. See also APPENDIX E hereto appended pages 89 and 90. News articles on FHA and HUD mortgage fraud appended hereto as APPENDIX O (such happenstance alluded to in pro se statement of case on granting of second loan application, but not with his knowledge) including article on "illegal conduct by Justice Department attorneys under the Ethics in Government Act. Appended hereto as APPENDIX O page 3 is news article on staff memeber of U.S. Justice Department collection staff in East St. Louis, Illinois.

22/ 7th Circuit Court order entered January 30, 1985 appended hereto as APPENDIX J and Motion filed Nov 27, 1985 in state court case 82 LM 1278 re Motion for Discovery filed May 20, 1983 but never allowed to be heard, bother appended as APPENDIX P et seq. 82-LM-1278 was continued for question of federal jurisdiction see order appended hereto as APPENDIX P page 3.

23/ Right of Recission with SBA pursuant to 15 USC § 16 35 et seq (TR page 537 line 14; page 539 line 15, line 24; page 540 line 20, 21, court reported repeatedly types recess instead of recission, but makes no correction when advised in writing) is denied by unnamed parties who purchased SBA direct loan to foreclose and make a profit and NOR to "aid, counsel assist and protect" small business of borrower in question APPENDIX K hereto and APPENDIX E hereto, specifically SOP SEction 50 No 51 Rev J page 126.9, et seq. See also APPENDIX Q appended hereto and being quit claim deed for amount of 67 k plus. See also 13 CFR 122.15-3(c) and 12 CFR 220 et seq.-220.13

24/ District court repeatedly admonished pro se UCC, Article 9, inter alia, did not apply in this case because the United States a party. See also note 1 above and APPENDIX A-1 hereto # 7 and # 8 and # 9 inter alia. APPENDIX E hereto, Section 50 No. 50 Rev 3 page 64 paragraph 53 et seq. District count

is clearly erroneous in denying constitutional right to a h earing before SBA seizure of "collateral" claiming real property involved does not constitute collateral under the terms of SBA security agreement cited.

24a/ CCA order entered January 30, 1985 refuses to consider jurisdictional question before the merits. Said order is appended hereto as APPENDIX J. See also appended hereto APPENDIX K et seq.

25/ Case set for trial 3 times and delayed three times by U.S. Attorney for insufficient evidence. Defendant's Exhibit Z (TR 218 line 9) contains copies of settings and continuances. Compromise offer of May 28, 1981 not forwarded to U.S. A ttorney for consideration. See note 3 above. SOP Section 50 No 51 Rev J page 126.16et seq paeagraph 139 b. et seq appended hereto as part of A PPENDIX E; also letter 5-28-8 1 appended hereto as page 5 APPENDIX H .

26/ See note 3 above. SOP Section 50 No 50 Rev J page 126.9 et seq appended hereto as part of A PPENDIX E. "The Government shouldn't, by its actions, make a pauper out of anyone or leave him without dignity. Accordingly, in our compromise considerations, it is the intention of the Agency, that each obligor be treated in a reasonable and humane manner..."

27/ See note 3 above. SOP Section 50 No. 51 Rev J page 126.15 ry drw spprnfrf hrtryo sd psty of APPENDIX G. "Court precedents exist, which require a lender to apply colpur profit to the debt...if the profit is such that it exceeds the remainin g loan balance, the overage should be retained by SBA as a colpur profit." in this case $20,000.00 profit on collecti on of an $8,000000 loan that "was not adequately secured enough to cure 4 months payments that were thought to be on deferment. S ee appended hereto A PPENDIX E page 61 et seq, APPENDIX G et seq, APPENDIX H et seq.

28/ Purchase of first mortgage from First Federal Savings and loan May 29, 1980 (see note 8 above) and then refusing payments from Terry Lynn Schuchman APPENDIX A-1 hereto at #10 is clearly seizure of "collateral" (see note 24 avove and APPENDIX E hereto page 64 paragraph 53 et seq) without due process of hearing (TR 467 line 14 et seq) Allison v Block, Curry v Block, injunction by Judge Van Sickle.

29/ District court VERDICT page 5 lines 19 and 20. Also included as A PPENDIX J in reply brief to 7th Circuit 7-2-85 as transcrip t of Judge's comments following non-jury trial 6-30-8 3. Subsequent hearing held July 27, 1984 to recuse, inter alia, district court enters no written ruling but transcript containing comments: "I may have been wrong I am not perfec." TR page 3 lines 4, 5, 6 and 7 from that hearing July 27, 1984 is filed March 8, 1985 to again recuse and deny Writ of Assistance for refutation by affidavit pursuant to Illinois Revised Statutes

30/ (TR 11-29-8 2 page 10 lines 17 et seq) "...answer with the file number, with the correct cause number.. The

file stamp shows they came to our office." AUSA Proud speaking. (TR 11-29-82 page 18 line 8 et seq) COURT speaking: "I am going to take the documents that you filed in Mr. Proud's office as either entries of appearance or as answers for the three of you." Affidavit to CCA denied Dec 4, 1985 for standard operating procedure. See appended hereto APPENDIX A-2. U.S. Attorney submits to court and court places in seperate file as per order 11-15-84 motion to CCA to prevent writ of assistance from issuing. Court ignores, allows U.S. Deputy Marshal Robert Winkleman to act as attorney on March 15, 1985 when AUSA Proud refuses to appear for plaintiff and issues Writ of Assistance contrary to law. March 18, 1985 Writ of Prohibition is sought in CCA 7th Circuit cause 85-1431, but denied and mandate issued same day.

31/ AUSA Clifford J. Proud sends letter December 6, 1982 to pro se allowing borrower to seek forebearance with SBA and a meeting between borrower and SBA taks place Dec 20, 1982 (trial set for that date is continued) where borrower makes compromise offer but SBA Counsel William A. Krajec says SBA cannot compromise because it no longer holds the notes and mortgages. Pro se files for summary judgment 1-14-83. District court allows third party intervenor Lynne Murphy. Krajec sends letter 1-27-83 reiterating SBA cannot compromise. See appended hereto APPENDIX K et se.

32/ Defendants are pro se without benefit of counsel. A pleading to make more definate the positions of the parties is denied by district court order entered 4-28-83 on page 3 appended hereto as APPENDIX C. Discovery in 82-LM-1278 re possession of property is never permitted by either district court or Illinois 20th Circuit State Court. Such issue of failure to complete discovery is part of June 3, 1983 hearing of which district court makes no record but enters an order June 13, 1983 that all pleadings argued June 3, 1983 are without merit. Interlocutory appeal is sought pursuant to 28 USC 1292(a)(1). See District Court Document #125. Motion to complete discovery is filed November 27, 1985 in state court and is appended hereto and APPENDIX P page 2 with copy of motion for discovery filed 5-20-83 but never heard clearly denial of due process. Court denies stay 5 USC 706. (APPENDIX Y page 2)

33/ Disttict court denies numerous informal requests to recuse and enters formal denial July 5, 1984, appended hereto as APPENDIX R, without hearing, then grants hearing July 27, 1984 but enters no written ruling. Transcripts shows court statement: "I may have been wrong. I am not perfect" see note 29 above. Memorandum filed May 4, 1984, appended hereto as APPENDIX S clearly defines the complexity of the issues, and includes Request for Default and Default Judgement Against Plaintiff filed May 4, 1984 with original answer of Lois C. Schau attached. Also appended hereto as a part of APPENDIX S is a copy of SBA reply letter 1-20-83 acknowledging notice of said counter claims. Interesting, too, is the fact district court dismisses with prejudice ~~counterclaims~~ counterclaims for judicial review in its order June 5, 1984 for lake of notice to SBA and 7th Circuit panel APPENDIX P page 4

in its order Nov 6, 1985 states: "Schuchmans sought no review in the district court." page 4 middle second paragraph thereof. See appended hereto APPENDIX A et seq, APPENDIX A-1 et seq.

34/ Copy of the mandate appended hereto as APPENDIX U AND copy of Docket record from 7th Circuit appended hereto as APPENDIX V. Court will take notice 1 env. loose pldgs withdrawn by law clerk 3/29/8 5 not returned, and not from district court to begin with, 4 env exhibits did not return to district court with other records.

35/ Interalia, court order 4-28-83 appended hereto as APPENDIX C page 5 states: "the motion of the defendants entitled Objections to Complaint will be taken and entered on the docket as an answer on the behalf of defendant Terry Lynns Schuchman..."et seq, but docket snows entry same day as order 4-28-83. Motion to Strike Objections to Complaint as answer (district court document # 73) is filed 5-5-83 with notice of motionesetting for June 3, 1983, court hears June 3, 1983, inter alia, but makes no record or ruling see district court record July 25, 1985. June 1, 1984 motion to Show Cause is filed re plaintiff's failure to comply with motion to compel to produce granted 6-27-83 re petition for judicial review. See note 33 above, said Motion to show causeis appended hereto as APPENDIX T. Evidence of denial of due process and equal protecgion when pro se attempts to challenge sufficiency of plaintiff's evidence appears in trial transcript on pages as follows:

PAGE	LINE	PAGE	LINE
42	5,6	58	12,13
56	14,15	63	9
75	18	75	1 et seq
85	14, 15	78	11
88	8,9, 13	208	4 et seq
139	1,2	213	1 et seq thru
150	1 et seq	217	4
153	10,11	221	24
178	4, 20, 25	227	8
186	8,9	232	7,8
187	7,8,9,	239	23,25
189	23	240	1 et seq thru
194	8,17, 18, 22	246	6
201	1 et seq	250	10
202	17	251	4,5,6
254	25	253	3
262	1 et seq		
266	23, 24, 25		
26 3	1 thru 17		
272	15		
292	1 et seq		
331	8,9, 10,11,12		
354	24		

Appended hereto as APPENDIX Y is notice of motion setting for Nov 16, 1984 to settle statement of evidence and/or proceeding June 3, 198 3. District court enters order 11-15-84 and denies hearing on said settlement bf disttict court. See also note 32 above.

36/ Two separate sets of interrogatories were submitted to SBA re Petition for Judicial Review. The first submission was made 2-23-83 with notice to SBA see Exhibit A appended hereto after argument in body of Petition. These were repeatedly resubmitted and also a second set was bubmitted in October 1983 after administrative review begum. Both setts are appended hereto as last pages of APPENDIX BB. SBA made no OBJECTIONS to interrogatories. Therefore they are then under obligation to answer. International Fertilizer & Chemical Corp v Brassiletto DC NY 1957, 21 FRD 193. District court refuses this procedurally due process and refuses to issue NOTICES TO DEPOSTION prior to hearing July 27, 1984. 7th Circuit finding that Schuchmans Sought non judicial review in district court is contrary to district court order Juene 5, 1984 dismissing such petition for judicial review with prejudice. See appended hereto APPENDIX L et seq.

37/ Plaintiff does not produce evicendce that formal authority to liquidate has been obtained. See note 3 above et seq.

38/ Defendant's Exhibit E at trial (TR p111, line 20, page 114 line 16 et seq. page 460 et seq) appended hereto as APPENDIX Z. Letter dated 8-9-78 states: "Accordingly, we are referring your loan to our management assistance division." Letter dated 8-14-78 refers request for allonge to Chicago District Office, see appended hereto also, APPENLIX G et seq.

39/ Plaintiff's Exhibit H at trial (TR 40) appended hereto as APPENDIX G.

40/ See APPENDIX A A appended hereto. Loan Servicing control card, defendant' Exhibit F at trial (159, 236, page 213, line 11) appended hereto as A PPENLIX X shows no reported deliquencies. Original answer 8-1-80 shall be liberally construed as request for injunction to enjoin enforcement of 2-14-80 SBA order appended hereto as last 3 pages of APPENDIX AA (TR page 328 line 8 et seq, see also page 325 line 4) filed 5-19-83 by Lois C. Schau with request for writ of assistance and affidavit filed 5-10-83 appended thereto exactly as presented June 3, 1983. (TR 353,line 3; page 354 line 24 court takes judicial notice of Title 15.) Court denies motion as being without merit and makes no record. Said order appended hereto as APPENDIX Y. pages 2,3,4,and 5 thereof. (TR 11-29-82 pages 18 lines 8,9,10,11, 12; page 10 lines 17,18,19,20,21,22, 23, 28) Original copies of transcript in possession of Supreme Court clerk said having been provided and retained upon request of pro se. See also APPENDIX K appended hereto and (TR 11-29-82 page 20 et seq.) Court delayed signing order until Dec 14,1982 F E & D 82-LM-1278 continued appended hereto as APPENDIX P page 3.

P

A-88

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA
Plaintiff,
vs
Thomas L. Schuchman
Defendant,

CIVIL NO 80-5143

FILED
MAY 4 1984
A. MARVIN HELART
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
ALTON OFFICE

MEMORANDUM

Now comes pro se defendant Terry LYnn Schuchman on the matter of motion to damages and counter claim filed March 29, 1984 and states:

1. Transcribing (tyhing) errors do occur.

2. The word libel is intended in #62, #76, #80, #81, #84, #85, #140, #141, #142, and #179. The word liable is typed.

3. The word libeled is intended in #44. The word liabled is typed.

4. #113 omitted underlined: SBA did fail to notify Thomas L. Schuchman in writing of deferment granted October 11, 1979. Request for said was made in writing August 23, 1979. See # 72.

5. #114 omitted underlined: SBA did negligently misrepresent amount of recorded mortgage in favor of SBA as $9,381.69 in its complaint filed June 24, 1980. This amount includes unsecured $1600.00 advanced 11-17-78 per Plaintiff's Exhibit N.

6. In #175 the word Voice is typed. The word intended is Volunteers . Attached is a news clipping dated April 12, 1984 with detailes of said complex highlighted to enhance Plaintiff's knowledge in forming a reply. Colonial BArber Shop faces Esteèèè Drive, which is 3 blocks long and dead ends into the 915 acre site.

7. Pursuant to Rule 7, FRCP District Court has power to order a reply to a counterclaim denominated as such.

8. Purely procedural matter of denomination of pleading would not be permitted to interfer with determination of substantive rights, and pleadings would be so construed as to do substantial justice. DeVito v. Hoffman, 1952, 199 F. 2d 468, 91 U.S. App. D.C. 263.

9. Counterclaims are proper subjects of a reply.

10. Defendant must set out claim for relief in accordance with rules 8 and 13 and

APPENDIX S

with sufficient particularity that plaintiff could file a reply under Rule 7. Phonenix-Apollo Steel Co. v Atlas Truck Corp D. C. Mass. 1949, 9FRD 454.

11. Plaintiff is under compulsion to file a reply to counterclaim. Curry v. Pyramid Life Ins. Co. C.A. Mo. 1959 271 F. 2d 1, certiorari denied, 80 S. ct. 373, 361 U.S 933, 4L. Ed. 2d 355.

12. Amendments to conform to the evidence may be made upon motion of any party at any time, even after judgment pursuant to Rule 15(b).

13. Whenever the claim asserted was attempted to be set forth in the original pleading the amendment relates back to the date of the original pleading pursuant to Rule 15 (c) i.e. original "answers" not filed due to "comedy of errors" by U.S. District Attorney's office and plaintiff's further failure to answer by reason of failure to understand counterclaims made in said "answers". See full discussion by Byse, suing the "wrong" defendant in Judicial Review of Federal Administrative Action: Proposals for Reform 77 Harvard Law Review 40(1963) see also Ill. Civil P. Act 46(4). In this particular instance, by means of the inital delivery of process to a responsible government official pursuant to Rule 4(d)(4) and (5). ie. U.S. District attorney's office in E. St. Louis.

14. Permission to serve a supplemental pleading may be granted upon such terms as are just even though the original pleading is defective in its statement of a claim for relief or defense. Carter v. American Bus Lines, Inc. D.C. Neb. 1958 22 F.R.D. 323.

15. Pursuant to Rule 13(e) and (f) pleader may set up the counterclaim by amendment and/or supplemental pleading.

16. If the court deems it advisable that the adverse party plead to the supplemental/ amended pleading, it shall so order, specifying the time therefor pursuant to Rule 15(d) FRCP.

17. Pursuant to Rule 9(b)(c)(d)and (g) averments to special matters and/or damage are made in the previous pleadings and are amended/supplemented by motion to damages and counterclaims filed March 29, 1984.

18. The claim of fraud is made with particularity on grounds of misstatements in the complaint and official documents filed by pro se and is a claim/defense sufficiently

pleaded originally although the term fraud was not used. Particulars are a false representation of a material fact, knowledge of its falsity by person making it, ignorance of its falsity by person to whom it is made, intent that it should be acted upon, and that it was acted upon by Thomas L. Schuchman (not making payments) to his detriment (filing of foreclosure suit).

19. A denial of performance and/or occurance is made specifically and with particularity herein.

20. In pleading the official document Defendant's Exhibit V Certificate of Indebtedness it is avered that the document was issued and/or that the act was done in compliance with law.

21. Items of special damage are claimed in the matter of minor child Tracia Lorie Schuchman's school circumstances and are so specifically stated pursuant to violation of the Pupil Rights Act of 1978. To look upon education as a sort of pyschological treatment of psychotherapy which addresses the child's feelings and emotions is expressly forbidden. It is a "serious invasion of privacy."

22. Violation of the statutes governing SBA is negligence as a matter of law and the court must act accordingly. Conditions precedent pursuant to Plaintiff's Exhibit 'G' Loan Authorization 5(e).

23. 15 USC 555(e) requires any denial to a written request to be made in writing.

24. SBA represented deferment granted July 25, 1979 to be 6 months.

25. Thomas L. Schuchman believed said representation and did not make payments for 6 months.

26. Written request for additional 6 month deferment was made August 23,1979 and received by SBA.

27. SBA claims deferment granted October 11, 1979 and acknowledgment made by telephone. A denial (anything less than additional 6 months) would be required by 15 USC 555(e) to be made in writing. SBA admits none was made.

28. Thomas L. Schuchman believed representation of additional 6 month deferment beginning October 1979 and did not make payments for six months.

29. SBA was in fraud of contract to help Thomas L. Schuchman own and operate a small business. Its apparent intent in contracting was to facilitate the sale of mortgaged property 122 East Shore Drive, Belleville, Illinois against the will of mortgagor's Thomas L. and Terry Lynn Schuchman.

30. An extremely important doctrine limiting the power of courts to discover the meaning of an agreement is the parol evidence rule. When the parties have reduced their agreement to a final written form, (June 21, 1983 Certified Statement of Indebtednes Befendants Exhibit V--contract purpose achieved sale of said mortgaged residence) apparently unambiguous, the courts will not receive extrinsic evidence (testimony by Marge Casey), the import of which is to vary or modify the fair effect of the written document (-0- balance, no mortgage loan outstanding--no liability). In other words, all evidence of the agreement outside the written document, although it may be logically relevant, is legally irrelevant.

31. Sworn testimony by Marge Casey fails to prove, or even allege, that said document was induced or entered into by fraud or duress to SBA. (Last Clear Chance Doctrine)

32. SBA sold all its rights in said mortgaged property located at 122 East Shore Drive Belleville, Illinois and said document evidences that agreement.

33. SBA maintained action in fraud of federal court jurisdiction and possibly in civil conspiracy with another.

34. The parol evidence rule is "essential to the maintenance of that certainty in human dealings, without which commerce degenerates into chicanery, and trade becomes another name for trickery."

35. It generally is said that courts will enforce express conditions strictly because the parties have incorporated them into their agreement in express terms (i.e. loan authorization 5(e) Plaintiff's Exhibit 'G".) However, this rule is applicable only after the court has decided what the language of the condition means. (declaratory judgment sought by pro se).

36. Evidence shows defendant Thomas L. Schuchman did act in good faith in the

performance of his promise.

37. A reasonable person would have been satisfied with the tender of performance of his promise. i.e. ability to repay if deferment granted until amount of disability check equals or is greater than monthly payment and/or business improves upon completion of federally funded highway 159 construction project.

38. Both conditions are absolute in occurance.

39. Courts hold that the promisee will have to be satisfied if a reasonable person would have been satisfied with the performance of the promise.

40. The court shall say in an action by the plaintiff for his compensation that "That which the law will say a contracting party ought in reason to be satisfied with, that the law will say he is satisfied with."

41. SBA's expression of dissatisfaction was dishonest and predicated by conditions not prima facie to promisor. (Special damages pursuant to Fair Credit Reporti Act)

42. Tender of performance is the promisor's expression of willingness to do that which he agreed to do and present ability to do it. The performance of SBA's promise is dependent upon the performance of Thomas L. Schuchman's promise and a tender of (by him is the equivalent of a performance | performance insofar as it entitles him to call upon SBA for the performance of its promise. i.e. Grant loan expansion request pursuant to loan authorization 5(e) Plaintiff' Exhibit 'G'.

43. Business income of Thomas L. Schuchman/DBA Colonial Barber Shop is now sufficient to make loan repayments of $96.00 per month promised by promissor.

44. VA Disability income check is now $114.00 per month an amount equal to or greater than monthly payments of $96.00 per month promised by promissor.

45. Both conditions are absolute in evidence of good faith tender of performance made April 24, 1980 by promisor Thomas L. Schuchman and represent evidence of ability to perform as agreed.

46. SBA failed in its performance of promise to take whatever statutory action necessary to assure the successful completion/establishment of the firm Colonial

Barber Shop and to resolve any doubt in favor of promisor/applicant Thomas L. Schuchman. i.e. to allow repayment to be spread over a period of 10 years.

47. Whether SBA has substantially performed so that it can maintain its action against the promisor Thomas L. Schuchman on his promise is a question of fact. If the deficiencies are such as to defeat the main purpose of the contract, i.e. make monthly payments out of business working capitol and go out of business for lack of working capitol--contract was to establish business--then SBA has not substantially performed. Nor is its performance substantial within the meaning of the of the doctrine if the deficiencies are the result of willfulness or negligence (violation of the statutes is negligence as a matter of law). SBA must attempt in good faith to comply with the terms of the agreement and must actually comply with them in substance.

48. Evidence shows SBA failed to act in good faith and failed to comply in substance.

49. The promisor is excused from the performance of his promise if its performance is rendered impossible by operation of domestic law. i.e. SBA claim it is forbidden to by law take/accept VA Disability check as monthly payment. Courts ususally say, in justification of this exception, that it would be contrary to public policy to compel a person to perform a promise contrary to law.

50. If parties expressly or by implication contemplate a certain mode of performance, and if performance becomes impossible by reason of the failure of that mode, the promisor is excused from performance. i.e. failure of business to generate profit sufficient to make monthly repayments during highway reconstruction (SBA negligent in failure to grant loan expansion pursuant to statute) and declaration of natural disaster by the President of the United States in 1979.

51. The plaintiff SBA may not recover damages (recoverable expenses) for lossess which it could reasonably have avoided (i.e. by granting of deferment), since the purpose of allowing it to recover at all is to put it in the position it would have been in if the defendant had fully performed.

APPENDIX 5

52. SBA admits placing Do Not Accept Payment Order on loan of promissor Thomas L. Schuchman, prior to commencement of litigation. This is a breach of contract i.e. promisor Thomas L. Schuchman agrees to make payment, promisee SBA agrees to accept payment.

54. The promisor is always excused from the performance of his promise if the promisee has made its performance impossible i.e. no payment cards or notices of payment due.

55. Thomas L. Schuchman performed as fully as he could and would have performed completely but for the fact that SBA by its own admitted act rendered further performance impossible. (i.e. sale of Certificate of Purchase)

56. Special damages are claimed by Terry Lynn Schuchman in the matter of her credit standing and reports to obtain employment.

57. SBA by its breach of contract to help Thomas L. Schuchman own and operate a small business concern did cause Terry Lynn Schuchman to divert her income to provide working capitol for the continued operation of small business Colonial Barber Shop by Thomas L. Schuchman.

58. SBA did have knowledge of said occurance and did request substantial proof in the form of paid bills and receipts in late October 1978.

59. Said diversion of income by Terry LYnn Schuchman did cause her loans made to pay private school tuition for minor child Tracia Lorie Schuchman to go deliquent.

60. Further said creditors did sue causing derogatory information to be made a part of her credit history.

61. Sadd derogatory information coupled with the fact that she was a named defendant in 80-5143 foreclosure suit did cause her to lose a full time job opportunity with BTHS West District 201 in July 1980.

62. Beginning with the fall 1980 school term a full-time opening in the math department at BTHS West did exist.

63. Terry Lynn Schuchman did ask to be considered for said job opening.

64. Involement of Terry Lynn Schuchman in said foreclosure suit did eliminate her

from consideration for said opening.

65. Another math teacher from out of state did apply and was hired on a one year contract.

66. At the end of the one year contract the other teacher was not rehired nor was the contract renewed.

67. Terry Lynn Schuchman continues to work for said school as a substitute and is considered highly qualified.

68. The uncertainty of the foreclosure proceedings continues to make her an unattractive candidate for full-time employment with the district.

69. Had SBA complied with its promise to help Thomas L. Schuchman own and operate a small business concern, Terry Lynn Schuchman would not have had to divert her income for that purpose.

70. On March 29, 1984 St. Clair County States Attorney Gary Bement did call pro se and ask release to be signed in the matter of Dennis Fournie and the lot variance on 124 East Shore Drive.

71. SBA Don Brookhart being in Belleville at Augustine's for a seminar was contacted and apprised of the situation.

72. He did agree to check with SBA counsel Bill Krajec and get back to pro se the next day.

73. Don Brookhart did not remedy the situation or contact pro se.

74. On April 26, 1984 St. Clair County States Attorney Gary Bement did again contact pro se and state Dennis Fournie was going to sue Schuchman's for failure to sign release.

75. Pro se does not have legal standing to release and special damages are claimed in this matter.

76. SBA failed to act being fully advised and has again exposed defendants to legal action by its inaction.

77. Memorandum contained herein is made in support of motion to damages and counter-

claim and request to compel to answer said and as such should be considered attached therein.

Terry Lynn Schuchman

Terry Lynn Schuchman
122 East Shore Drive
Belleville, Illinois 62221
618-277-4089
pro se defendant

APPENDIX F

The Tribune

25¢

Thursday, April 12, 1984
Vol. 12, No. 28, 16 pages
25 cents copy, $10 year by mail in county
A Yelvington Publication, Phone 397-0015
P.O. Box 1803, Fairview Heights, Ill. 62208

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APPENDIX S

Millions more in development slated for city

Connie Mueller

illions of dollars in construction will be spent in Fair-w Heights within the next year, much of it under the ection of the Ralph Korte Co. Other projects are in the nning stages while some seem to be in limbo.

staurants lead the current list in terms of numbers. e operators of the Belleville Pasta House Co. recently ned a lease for the building at the entrance to St. Clair are which formerly housed Sambo's and then Season's taurants. Nearly a half-million dollars in renovation is nned for the 45,000 square foot site to seat 180 diners. ners are projecting a mid-summer opening.

announced at the March Chamber of Commerce in-llation banquet, Dutt's Cafeteria, which also has outlets St. Louis and Alton, is planning to build on the present of the Harvest Moon Motel at the corner of Lincoln il and North Ruby Lane, guided by Korte. The property ned B3 so that developers have only to present plans obtain a building permit. No plans have yet been eived, according to the city planning department.

owbis Plaza Place recently obtained a building permit $182,600 in renovation at 10850 Lincoln Trail, the former e of the Wamser Ferman store in Crossroads Centre. A ing opening is planned for the restaurant which is ned for, in addition to its food, an animated band, rides d video games for the younger customers.

augles, a Mexican chain with outlets in St. Louis, lleville and Collinsville locally, is coming before the ning Board of Appeals later this month. Because of the all size it sits on just north of Vic Tanny, Naugles is king a variance on its building setback requirement. at parcel is also zoned B3 requiring just plans and a ilding permit.

wo restaurant buildings are currently for sale. The 5,300 uare feet that once housed the Trailways restaurant and el recently Grizzanti's at the corner of St. Clair and Rt. is zoned planned business. The Taco Bell building on ncoln Trail has 1,288 square feet and is zoned B3.

had projected an Aug. 1, 1983, groundbreaking for the single-family, three bedroom units development.

Federal paperwork delays are apparently to blame for the lack of action on the Volunteers of America's complex for the ederly and handicapped, 120 efficiency and one-bedroom apartments between Estelle and Lanaghan Drives on 9.5 acres. A $6 million Housing and Urban Development loan was obtained in 1982 and the group had projected a spring, 1983, opening. But as of the first of this year, the VOA had not exercised its option to purchase the site. Nearby residents have sought information to rezone their land for commercial use and begun a petition drive to cut funding to such projects.

The Fair Value Mall, a concept of Sam Longiotti of North Carolina to be financed through $8 million in bonds, was to have been completed by August of this year, but since its approval last summer no construction has taken place. Plaza Associates planned to build two department and 40 smaller retail stores, as well as a dozen restaurants, on 26 to 40 acres north of the Market Place development, with anticipated annual sales of $90 million. Marshalls was supposed to have been one of the anchor tenants.

Fairview Towers, Inc., held its groundbreaking for a five-story office building with heliport and gourmet restaurant in June of 1982. To date, however, no plans have been submitted for the structure on Lincoln Highway. Korte had projected a nine-month construction period.

The May Co. has also not submitted any further plans for its outlot development at the Venture site, after failing to come to terms with the city on traffic improvements to accompany the project.

The Illinois Center for Autism, however, has been busy raising funds and arranging financing for its new center near Longacre Park and the city garage. It is projecting a mid-summer groundbreaking.

IDOT will also be a part of the city's growth, when Lincoln Highway will be widened to four lanes from the west mall entrance to Mt. Vernon during the 1985 construction season. Plans include the retention of the middle turn lane, installation of storm sewers and curb and gutter and new culverts for Ogles Creek drainage. The $1.1 million project is to be financed through Federal Aid Urban funds.

A-98

U.S. SMALL BUSINESS ADMINISTRATION

WASHINGTON BUILDING
FOUR NORTH OLD STATE CAPITOL PLAZA
SPRINGFIELD, ILLINOIS 62701

May 4, 1982

Mr. Thomas L. Schuchman
122 East Shore Drive
Belleville, Illinois 62221

Re: Colonial Barber Shop
Loan # 778685 10 07

Dear Mr. Schuchman:

Thank you for the financial information supplied by you as of April 23, 1982.

On April 20, 1982 the Small Business Administration by means of a protective bid in the amount of $41,100 purchased the property at 122 East Shore Drive in Belleville, Illinois. The amount of this purchase, $41,100 was applied to the Colonial Barber Shop loan. This purchase amount pays off the barber shop loan. Therefore, we are no longer interested in the financial statements from business.

It is my understanding that you have six months from the date of April 20, 1982 to redeem the property. If the property has not been redeemed by that time we will receive a U. S. Marshal's Deed to the property and offer it for sale. After the end of this redemption period you will be given 30 day notice to vacate the property. If you do vacate the property before that time please advise this Agency.

Sincerely,

Marjorie L. Casey

Marjorie L. Casey
Loan Officer

MLC/ss

APPENDIX C

after obtaining deed. It is the manner also expressed by Marge Casey in her letter to Thomas L. Schuchman dated May 4, 1982. It is <u>not</u> the manner in which Marge Casey sold 122 East Shore Drive. She failed to explain how the Certificate of Purchase came to be assigned; and <u>why</u> the deed was not issued to SBA. She produced no such publication as shown below. Court will note her admission (in letter attached) that SBA is no longer interested in the business. It appears SBA's interest was the sale of mortgaged property at 122 East Shore Drive in Belleville, Illinois.

SECTION B

Sat., Mar. 10, 1984

ST. LOUIS POST-DISPATCH

831—Bids/Proposals Wanted

SMALL BUSINESS ADMINISTRATION

SEALED BID SALE

Invitation to bid for 7 year old house located at 16444 Hampshire Ridge (Eaton Mill Trails) Chesterfield, Missouri 63017.

- Approx. ½ acre wooded lot
- Family room with fireplace
- Four bedrooms approx. 3,200 SQ FT
- 2½ baths
- 2 car garage
- Full basement (unfinished)
- Open house March 25, 1984 from 1:00 pm to 4:00 pm.

Anyone interested in the purchase of this real estate may obtain bid forms and a statement of terms and conditions relating thereto at the Small Business Administration, 815 Olive Street (room 242) St. Louis, Missouri 63101 (Ray W. Scoggins, Loan Specialist).

Bids for the property will be considered only if made in accordance with and subject to the terms and conditions set forth in said statement. All bids must be presented at the aforesaid District Office of SBA by 3:00 pm central time April 12, 1984.

Only PRIVATE PARTY advertisers selling merchandise Except Paid for $3,000 OR LESS, with price in the ad copy, qualifies. The price quoted is a Flat Rate, there is no reduction in price for early cancellation.

Minimum Ad Size is 3 Lines

Call 621-6666

Monday thru Friday 8:00a.m.–6:00p.m.
Closed Saturday & Sunday

APPENDIX C

IN THE SUPREME COURT OF THE UNITED STATES
FEBRUARY 1986 TERM NO. _____ A-160

SCHUCHMAN, PETITIONER
v
UNITED STATES OF AMERICA, ET AL
RESPONDANTS

46 Emerald Lane
Fairview Heights, Illinois 62208
February 4, 1986

ATTN Edward L. Turner
Office of the Clerk
Supreme Court of the United States
Washington D. C. 20543

PROOF OF SERVICE

Dear Sirs

Please submit enclosed intanster to Justice William O. Brennan, in the matter of A-439 which he referred to the court, pursuant to Federal Rules of Civil Procedure Rule 15(a) which states: "leave to amedd shall be freely given." Foman vs Davis 371 U.S. 178, 182 (1962). "This mandate is to be heeded." The request is to amend from Petiton to Stay the Mandate to Petition to Recall the Mandate with due consideration to be given to the fact that order issued January 23, 1986 in 7th Circuit joined causes 84-2322 and 85-2348 may be an abuse of discretion due to lack of jurisdiction per letter 1-30-86 from pro se clerk reproduced on reverse hereof. Further, the petiton to stay the mandate became moot on January 3, 1986 and should therefore be allowed to be amended to do substantial justice and court clerk, pursuant to Supreme Court Rule 19 et seq, shall request three part status report filed in 7th Circuit 84-2322 in compliance with CCA order 11-13-84 to be transmitted instanter for consideration hereof.

Petition for Writ of Cert was submitted February 3, 1986 via express mail # B 44815773 with service being had upon Solicitor General by express mail # B 44815775; and service up on SBA Administrator Robert K. Andrews, et al 3:20 p.m. by hand delivery at 818 Olive Street St. Louis, Missouri, Feb 4, 1986; and service upon AUSA Clifford J. Proud 3:45 p.m. by hand delivery at 750 Missouri Avenue, East St. Louis, Illinois 62201 February 4, 1986 thereby completing service upon all parties as of 4:00 p.m. Central Standard Time February 4, 1986.

Respectfully submitted,

Terry Lynn Schuchman

T. L. Schuchman

encl: MOTION FOR RECONSIDERATION CCA ORDER 1-23-86

cc: Charles Fried, Solicitor General
AUSA CLIFFORD J. PROUD
SBA Counsel William A. Krajec

I certify by my sworn signature below that service is true and correct as detailed in paragraph 2 above

Terry Lynn Schuchman
TERRY LYNN SCHUCHMAN

Shelia Rackley
NOTARY PUBLIC

Subscribed and sworn to before me this 11th day of February 1986. My commission expire

MY COMMISSION EXPIRES OCT. 15, 1988

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

February 4, 1986

Mr. Thomas L. Schuchman
46 Emerald Lane
Fairview Heights, IL 62208

RE: Thomas L. Schuchman, et al. v. United States, et al.

Dear Mr. Schuchman:

The above-entitled petition for a writ of certiorari was received February 4, 1986. The papers are returned for the following reasons:

(1) No signed motion for leave to proceed in forma pauperis is attached. See Rule 46.

(2) No affidavit of indigency is attached. See Rule 46 and the enclosed sample.

(3) The papers fail to comply with the Rules of this Court that govern the format of a petition for a writ of certiorari. See Rules 21 and 46.

(4) No affidavit of service upon opposing counsel was received. See Rule 28.

Very truly yours,

JOSEPH F. SPANIOL, JR., CLERK

By

Sandra Elliott Spagnolo
Assistant Clerk

cdd
Enc.

PETITIONER REQUESTS TO PROCEED AS A VETERAN AND SO STATES BY AFFIDAVIT RULE 46 EFSEQ SHALL INCLUDE RULE 47 and all TITLE 38 USC AS APPL 72 STAT 384 inte alia see page 6 of Petition for Cert district court allowe Thomas L. Schuchman to pro-ceed without paying any fees.

TABLE OF CONTENTS INCLUDES ALL REQUIRED MATERIAL AND ORDERS ARE ATTACHED AS DETAILED ON FRONT PETITION ON EXACT SAME FILE PAPER AS ISSUED FROM LOWER COURTS

LEAVE TO PROCEED AS SUBMITTED IS SOUGHT.

AFFIDAVIT OF SERVICE IS REPRODUCED ON REVERSE HEREOF AS SUBMITTED--DID NOT ACCOMPANY RETURNED PETITION?????????

SHOULD REQUEST TO PROCEED AS A VERTERAN BE DENIED PLEASE INSTANTER CALL TERRY LYNN SCHUCHMAN AND A MONEY ORDER FOR FEE WILL BE INSTANTER DISPATCHED 618-398-8091 petitoner Thomas L. Schuchman seeks not reemployment rights, but the right to continue self-employment DBA COLONIAL BARBER SHP WHICH SBA SEEKS TO DENY.

85-1875

Supreme Court, U.S.
FILED
FEB 14 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

FEBRUARY TERM 1986

THOMAS L. SCHUCHMAN, ET UX PETITIONER,

v

UNITED STATES, SOLICITOR GENERAL CHARLES FRIED, JUSTICE DEPARTMENT, ATTORNEY GENERAL EDWIN MEESE, U.S. ATTORNEY FREDERICK J. HESS, AUSA CLIFFORD J. PROUD, U.S. MARSHALS SERVICE, DIRECTOR STANLEY E. MORRIS, U.S. MARSHAL DONALD R. BROOKSHIRE, DEPUTY MARSHAL ROBERT WINKLEMAN, DEPUTY MARSHAL RICHARD WOODARD, SMALL BUSINESS ADMINISTRATION, ADMINISTRATOR JAMES SANDERS, ASSISTANT ADMINISTRATORS, JOHN E. LAGOS, CHARLES R. HERTZBERG, EARL CHAMBERS, PATRICK H. STIEHMS, ERIC BENDERSON, WILLIAM A. KRAJEC, MARJORIE L. CASEY, W.K. ANDREWS, aka R.K. ANDREWS, aka ROBERT K. ANDREWS, DONALD I. BROOKHART, aka D. I. BROOKHART, ET AL UNKNOWN

RESPONDANTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

APPENDIX C

Thomas L. Schuchman
46 Emerald Lane
Fairview Heights, Il.
62208
618-398-8091

Terry Lynn Schuchman
46 Emerald Lane
Fairview Heights, Il.
62208
618-398-8091

30 pp

APPENDIX C INDEX

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UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

December 5, 1985

No. 84-2322
85-2348

USA, SBA, ET AL

V.

SCHCUHMAN, ET AL

Appeal from the United States District
Court for the Southern District of Ill.

COFFEY, EASTERBROOK, ESCHBACH, CIRCUIT JUDGES

On consideration of the petition for rehearing en banc filed in the above-entitled cause by defendants-appellants, no judge in active service has request a vote thereon and all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Submitted November 10, 1985

Filed November 29, 1985

No. 84-2322
85-2348

USA, SBA, ET AL
V.
SCHUCHMAN ET AL

Appeal from the United States District Court
For the Southern District of Illinois--Alton

SUGGESTION FOR REHEARING EN BANC

Below is Suggestion for Rehearing in Banc to be attached to 25 copies of Appellant's Main Brief filed 9-19-84. "There is no excuse for printing same matter in supplemental appendix on appeal if material is already in the appendix." Drewett v Aetna Cas. and Sur Co C.A. La. 1976 539 F 2d 496, and distributed per Federal Rules of Appellate Procedure Rule 35(b): The clerk shall transmit any such suggestion to the members

of the panel and the judges of the court who are in regular active service..."

Comes now pro se citing Motion for Mistrial and A new Trial filed July 21,1983 contained in Short Appendix pages 6, 7, 8, of Appellant's Main Brief filed 9-19-84 and #9 on page 10 Short Appendix, and Motion to Compel to Answer page 14 and 15, Short Appendix of Appellant's Main Brief filed 9-19-84 and states:

1. The Supreme Court succinctly stated, "No, matter how rational or consistent with congressional intent a particular decision might be, the determination of eligibility cannot be made on an ad hoc basis by the dispenser of the funds." Morton v Ruiz, 415 U.S. 199, 232 (1974).

2. Reasons given by SBA in 2-14-80 order to accelerate the loan were "conclusory, unsupported, and contradictory" and the decision was thus an abuse of discretion. Allison v. Block 556 F. Supp 400, 405

(V.S. Mo. 1982). 723 F 2d 631 (8th Cir).

3. Schuchman met eligibility requirements for deferment and disaster loan and VA Check assignment showed reasonable repayment ability and Schuchman did follow administrative procedural requirements which SBA loan office Marjorie L. Casey ignores and district court concedes "there may be some evidence in the record that would tend to support that claim."

4. Even if SBA does not publish formal findings of fact and conclusions of law, it must clearly articulate the reasons for each decision in a manner susceptible to judicial review for an abuse of discretion. See City of West Chicago v United States Requlatory Commission 701, F. 2d 632, 648 (7th Cir) 1983.'

5. "SBA may choose to foreclose on a mortgage rather than give the mortgagor more time." is clearly an issue of continuing public interest.

6. Statement of facts in unpublished order

is clearly erroneous and criticizes: or questions existing law 28 USC 1292(a)(1) Interlocutory appeal from order denying injunction must be allowed.

7. That "the SBA was clearly authorized to declare Schuchman in default, accelerate the maturity of the note, and foreclose..." establishes a new or changes an existing rule of law. 15 USC 633 et seq. Allison v Block 556 F. Supp. 400, 405, W. D. Mo 1982, 723 F 2d 631 (8th Cir) 12-28-83.

8. In absence of proper motion by pro se, CCA is requested, to guard against injustice to sua sponte make appropriate motion, to request a vote on pro se Suggestion for Rehearing in Banc. decision by unpublished order Nov 6, 1985. Christoffel v U.S. 1951 190 F. 2d 585, 88 U.S. App. C. C. 1 and Robinson v U.S.C.A. Mo. 1964, 333 F. 2d 322.

Respectfully submitted,

Terry Lynn Schuchman

46 Emerald Lane

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

December 4, 1985

USA, SBA, ETAL
V

SCHUCHMAN, ET AL

Appeal from the United States District Court for the Southern District of Ill.

ESCHBACH, CIRCUIT JUDGE

This matter comes before the court for its consideration upon the "AFFIDAVIT AND MOTION FOR FULL COURT RECONSIDERATION OF ORDER NOV 21, 1985 TO STAY THE MANDATE" filed herein on November 26, 1985, by Thomas L. and Terry Lynn Schuchman. On consideration thereof,

IT IS ORDERED that the request for "full court reconsideration" is hereby Denied pursuant to Seventh Circuit Operating Procedure 1(a)(1).

united states court of appeals
for the seventh circuit

November 26, 1985

No. 84-2322
85-2348

USA, SBA, ET AL

v

SCHUCHMAN ET AL

Appeal from the United States District Court for the Southern District of Ill.

AFFIDAVIT AND MOTION FOR FULL COURT RECONSIDERATION OF ORDER NOV 21, 1985 TO STAY THE MANDATE, CHRISTOFFEL V U.S. 1951 190 F. 2d, 585, 88 U.S. App. D. C. 1 and ROBINSON V U.S. C.A. MO. 1964 333, F. 2d 322

I Affiant Thomas L. Schuch;man do Solemnly affirm:

1. Reiterative Answer by Thomas L. Schuchman presented for filing February 7, 1983. appears in record to CCA as Document #43.

2. Original answers, mailed to U.S. Attorney timely, (TRANSCRIPT 11-29-82 page 10, lines 17 et al.) has written across it in red ink "A judicial review is sought." or words to that effect.

3. Number 3 said REITERATIVE ANSWER filed 2-7-83 states, "SBA was argumentative and capricious..."clearyly referring to 5 USC 706 (2)(A) and reiterating letter 7-10-80 styled answer 80-5143(8-1-80).

4. Numbers 8, 9, 10, said REITERATIVE ANSWER refer to 5 USC 706 2(B)(C) and (D) inter alia. as did original answers mailed to U.S. Attorney, in 1980.

5. I did not submit to the jurisdiction of the district court for any reason other than a judicial review of SBA order 2-14-80.

6. The district cout's refusal to perform a judicial review pursuant to 15 USC 634 et seq, 5 USC 701 et seq may be an abuse of discretion.

7. June 3, 1983 motion hearing clearly evidences judicial review is sought. My motion for continuance indicates I am asking SBA to clearly articulate the statutory reasons for their decisions not to defer and not to grant disaster relief in a manner susceptible to judicial review

for an abuse of discretion by SBA officials Marjorie L. Casey, William A. Krajec et al. 8. For that to occur district court must stay its hand until SBA review is performed and SBA central office (13 CFR Ch 1 122. 15-3(c) makes its determination. 13 CFR Ch 1 et seq clearly states any subsequent holder of SBA note is bound to same terms and conditions as SBA would be. MOTION FOR MISTRIAL AND A NEW TRIAL certified to CCA as document # 128; and 7-21-83 MOTION BRIEF allowed by district court as attached to said and certified by district court as document # 132. I certify by my signature hereto that the copy attached is a true and authentic copy of the first page of said 7-21-83 MOTION BRIEF, and do hereby seek to stay the MANDATE on grounds that appeal has merit and pro se shall prevail on Writ of Cert. To do substantial justice I do seek CCA full court, or judge thereof to make appropriate motion pursuant to cites in caption above. I hereby request clerk

to instanter file and submit to at least three active judges this motion and affidavit.

Thomas L. Schuchman

NOTARY PUBLIC SUBSCRIBED AND SWORN TO BEFORE ME THIS 25 th DAY OF NOV, 1985.

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 84-2322
85-2348

USA, SBA, ET AL

V.

SCHUCHMAN, ET AL

January 30, 1985

Appeal from the United States District Court for the Southern District of Ill.

BAUER, CUDAHY, ESCHBACH, CIRCUIT JUDGES

This matter comes before the court for its consideration upon the "REQUEST FOR DISMISSAL FOR LACK OF JURISDICTION WITH MEMORANDUM" , and brief in support of, filed herein on December 21, 1984, by pro se

defendants-appellants.

Appellants have filed a motion to dismiss directed toward questioning the jurisdiction of the lower court to enter a judgment against them. Such a contention is not properly addressed in a motion to dismiss and is more appropriately addressed in appellants' briefs on the merits. Accordingly

IT IS ORDERED that said motion is DENIED and appellants are instructed to raise the issues contained therein in their briefs on the merits.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

November 29, 1985

USA, SBA, ET AL

V.

SCHUCHMAN, ET AL

Appeal from the United States District Court for the Southern District of Ill.

MOTION TO SUPPLEMENT THE RECORD ON PETITION FOR REHEARING, CCA TO SUA SPONTE

MAKE APPROPRIATE MOTION, SEE FOOTNOTE 2 PAGE 4 NOV 6, 1985 CCA UNPUBLISHED ORDER, MEMORANDUM IN SUPPORT

Comes now pro se and seeks to supplement the record on Petition for Rehearing and attaches relevant motions filed in 82-LM-1278, a state court action, and a copy of page 449 Black's Law Dictionary signed by Thomas L. Schuchman, all cites contained therein due process clause et seq , and further cites footnote 2 page 4 Nov 6, 1985 CCA unpublished order, Robinson v U.S. C.A. Mo 1964, 333 F. 2d 322, Christoffel v U.S. 1951, 190 F. 2d 585, 88 U.S. App D. C. 1. State action 82-LM-1278 file does contain copy of 5 USC 706 et seq.

MEMORANDUM

1. District court allows third party intervenor (D.C. DOC. #37) who claims to be recipient of a warrenty deed. (D.C.DOC.#30).

2. Request to city Plaintiff and third party intervenor et al for contempt (D.C. DOC #109) is ordered without merit and is

therefore denied (D.C. DOC. #113). Interlocutory appeal pursuant to 28 USC 1292(a)(1) (D.C. DOC. #125, CCA correspondance file letter 7-11-83) is ignored.

3. Request to cite (D.C. DOC # 109) is restyled and filed 4-5-84 in state action 82-LM-1278 with SBA Loan Action #17 dated 7-21-83 attached. Said attached hereto and incorporated herein along with motion to remove inter alia filed 11-27-85 in 82-LM-1278 by mention.

4. SBA review begun 7-28-83 (D.C. DOC. #149, #166, #173) finds in favoar of pro se Thomas L. Schuchman. As appears of record SBA officials Marjorie L. Casey, William A. Krajec and D.I. Brookhart abused their discretion as did Alton district court in proceeding to trial (D.C. DOC. #33, #34 #35, #36, #37, #68, #102, #110, #113, #119) and in failing to perform review/judicial review as originally requested. (Transcript 11-29-82 page 10 and page 18 lines 9 thru 12) inter alia. *Suggestion For Rehearing IN

BAnc attached hereto and incorporated herein by mention.

Terry Lynn Schuchman

NOTARY PUBLIC

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

November 6, 1985

No. 84-2322
85-2348

USA, SBA, ET AL

v.

SCHUCHMAN, ET AL

Appeal from the United States District Court for the Southern District of Ill.

COFFEY, ESCHBACH, EASTERBROOK, CIRCUIT JUDGES

* After preliminary examination of the briefs, the court notified the parties

that it had tentatively conclueded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a "Statement as to Need of Oral Argument." See Rule 34(a) Fed. R. App. P.;Circuit Rule 14(f). On September 19, 1984 Defendants-Appellants, Thomas and Terry Schuchman, filed a request to qaive oral argument. On August 6, 1985, Defendants-Appellants filed a "Statement as to Need for Oral Argument with Motion to Make Certain Unanimous Three Judge Panel." Upon consideration fo these statements, the briefs, and the record, the appeal is submitted on the briefs and record.

ORDER

The United States commenced and action to foreclose on a mortgage with appellants, Thomas and Terry Schcuhman, executed as security for a Small Business Administration (SBA) loan. Following a three-day bench trial, the district court entered judgment in favor of the United Ststes, and the Schuchman

appeal. In a separate petition which has been consolidated with the instant appeal the Schuchmans request review of a SBA order. We affirm in part and dismiss in part.

In October 1977, the SBA loaned Thomas L. Schuchman $8,000. for equipment and working capital in the operation of a barber shop located in Fairview HEIGHTS, Illinois. A year later, the SBA increased the loan to $9,600. To secure the loan Schuchman signed a note and , along with this wife Terry, executed a second mortgage on their home. Under the terms of the note, payments were to begin in November 1977. During the course of the loan, the SBA granted Schuchman two six-month deferments the last covering the period from April to September 1979. Although monthly installments were to begin again in October 1979, Schuchman made no payment, and the SBA again contacted Schuchman and advised min that his loan was three months past due. This time, however, the SBA also warned

Schuchman that if he did not pay the installments them due the SBA would transfer the loan to liquidation status. But the SBA received no money, and after it failed to receive the installment due January 1980, the SBA informed Schuchman that it had elected to declare the loan in default and the balance of the note due. Schuchman subsequently requested, (but the SBA denied) yet another deferment. Because other proposed means to remedy the default proved unsatisfactory, the SBA decided to bring foreclosure proceedings. It purchased the first mortgage and note on the Schuchman home, acquired an assignment and on June 23, 1980, the United States on behalf of the SBA commenced the instant foreclosure action. The proceedings that followed only could be described as arduous and protracted, but the case eventually came to trial. The district court found that it could only "come to the one conclusion and that is that this mortgage was deliquent, was in default, the payments

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were not made, the terms of the note and mortgage were not complied with." Additionally, the court found that "there was no third deferral...to prevent the loan from going into default" as the Schuchmans had contended. Accordingly, the district court entered judgment on July 12, 1983 in favor of the government in the amount of $43,967.72 and ordered the sale of the Schuchman home. The court also entered judgment in favor of the government and against Schuchman on an unsecured note in the amount of $2,089.67. The Schuchmans subsequently filed numerous motions which the district court considered, in part as having been brought pursuant to Fed R. Civ. P. 59. On June 5, 1984, the district court denied all post-trial motions filed by the Schuchmans.

There is no question but that the SBA must insist upon prompt payment of due installments on its loans, see 13 CFR 122.21 and, if a borrower is in default on one or more installments, the SBa may choose

to foreclose on a mortgage rather than give the mortgagor more time. See 13 CFR 122.23-.24. Contrary to the Schuchmans' assertion, the record clearly establishes that the SBA loan was in default and that there was no deferment in effect to prevent the default.

The first payment on the Schcuhman loan was due on November 20, 1977 (and the 20th day of each month thereafter) but made on December 6, 1977. Schuchman paid the next four monthly installments on December 19, 1977; January 27, 1978, March 13, and April 6, 19 Schuchman failed to make the April and May payments, but on June 8, 1978 the SBA granted Schuchman a six-month deferment (for installments due April 20 thru September 20, 1978). Schuchman made six additional payments on his loan--November 1 and November 24, 1978 February 12, March 14, April 11, and July 10, 1979--which the SBA applied to the in stallments due October 1978 through March 1979. In June 1979 Schuchman requested another six-month deferment. The SBA again

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approved the request (upon a recommendation that that Schuchman be given "one last chance") but mistakenly granted only a four-month deferment. When discovered, the SBA remedied the problem and added two months to the second deferment. Consequently the SBA deferred payments on Schuchman's loan for the period April through September 1979. Payments were to resume again on October 1979. However, Schuchman made no further installments, and the SBA granted no additional deferments. The Schuchman's contention that there was an additional deferment that would have prevented the note and mortgage from being in default is without merit. The district court's finding is not clearly erroneous and accordingsly will not be set aside. De Pass v. United States, 721 F. 2d 203, 205 (7th Cir. 1983). Schuchman contracted to pay monthly installments on his SBA loan and the SBA's insistence upon prompt payment of the installments when due was

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proper. The district court conceded that "there may be some evidence in the record that would tend to support that claim, but found the evidence "not convincing not persuasive." Moreover, the SBA was clearly authorized to declare Schuchman in default, accelerate the maturity of the note, and foreclose on the second mortgage where it held both first and second mortgages. United States v. Olsen, 515 F. 2_d 1269, 1271 (1st Cir. 1975). Indeed, the SBA's actions were consistent with its obligation to insure the integrity and viability of its loan program. See United States v. Wallace & Wallace Fuel Oil Co., Inc., 540 F. Supp. 419, 431, (S.D.N.Y. 1982).

The Schuchmans further contend that SBA decisions regarding the loan were not proper. They argue that decisions not to grant a third deferral, provide other financial or managerial assistance, or accept VA checks as direct payment on the loan, and

many other administrative decisions were wrong and violated their right to due process under the law. The SBA must make many decisions in the course of administering its loan programs which are by their very nature committed to agency discretion and expertise. See e.g., 13 CFR 131.3(a) (loan deferments); see generally 15 U.S.C. 634 (b). Where, as here, the decisions of the agency involve discretionary managerial and business rather than legal judgments such decisions are unreviewable. See Gifford v. Small Business Administration, 626, F. 2d 85, 86 (9th Cir. 1980)(SBA's determination of whether to provide managerial counselling and aid is clearly committed to agency discretion and nonreviewable); see also United States v OCCI Co., 758 F. 2d 1160, 1167 (7th Cir. 1985)(HUD managerial and business judgments made during course of administering loans not relevant to foreclosure action) (Posner, J., concurring).

Finally, the Schuchmans seek review

of "the order of the U.S. Small Business Administration authorizing demand letter entered on February 14, 1980." 1/ In essence the Schuchmans ask that we review the SBA's initial decision to declare the loan in default and accelerate payment. Section 634(b)(1) of Title 15 United States Code, permits the Administrator of the SBA to sue and be sued and confers jurisdiction on the federal district courts to hear such suits. Expedient Services, Inc. v. Weaver 614 F. 2d 56, 57 (5th Cir. 1980); see also Johnson v. Citizens Bank & Trust Co. 659 F. 2d 865, 870 (8th Cir. 1981).2/ The Schuchmans sought no review in the district court. Ratehr, they filed the instant petition as an original action in

1/ TLhis request was filed as a separate appeal (No. 85-2348) and consolidated with the instant appeal (No. 84-2322) for decision.

2/ Jurisdiction is also granted to state courts having general jurisdiction. 15 U.S.C. 634 (b)(1). See, e.g., Carter v. Small Business Administration, 573 P. 2d 564, 40 Colo. App. 271 (1977), cert. denied 104 S. Ct. 711 (1984).

this court on August 6, 1985. As such, this court's without jurisdiction to entertain the petition. See Noland, v. United States Civil Service Commission, 544 F. 2d 333, 334 (8th Cir. 1976)(per curiam) (court of appeals has no jurisdiction to review administrative order under AdministativeProcedures Act unless expressly authorized by separate statutory grant of power); School Board of Broward County v. Department of Health, Education and Welfare, 475 F. 2d 1117, 1119 (5th Cir. 1973) (same); Arizona State Department of Public Welfare v. Department of Health, Education and Welfare, 449 F. 2d 456, 464 (9th Cir. 1971) (same), cert. denied, 405 U.S. 919 (1972).

Compare 28 U.S.C. 2342. 3/ Accordingly we dismiss appeal No. 85-2348. 4/

AFFIRMED IN PART
DISMISSED IN PART

3/ The Schuchmans allege jurisdiction under the Administrative Procedure Act, 5 U.S.C. 701 et seq, but it is clear that this Act does not provide an independent grant of

(footnote continued)

jurisdiction. Califano v. Sanders, 430 U.S. 99, 107 (1977).

4/ Since the submission of their Reply Brief, the Schuchmans have filed a series of motions. In an order dated Augsut 19 1985, two such motions were to be consid ered along with the merits of the appeal, i.e. "MOTION TO ALLOW CORRECTION OF OMMISSIONS (SIC) AND MISSTATEMENT" AND "MOTION TO ALLOW COMPOSITION OF THE RECORD AS FOLLOWS." Upon consideration of both motions, each is hereby denied.

On September 26, 1985, appellant filed an "Emergency Petition for Injunction to Enjoin SBA from Selling by Quit Claim Deed and Title Policy Mortgaged Property 122 East Shore Drive, Subject Matter of this Case." Our decision today makes the relief requested moot.

On October 7, 1985, appellant filed a "MOTION TO MAKE CERTAIN: NO EXCUSABLE NEGLECT IN 85-1431; LAW CLERK ON DOCKET 84-2322 WHO WITHDREW RECORD, 1 env. loose plds; and/or to Supplement the Record; memorandum in support." To the extent that the motion requests action with respect to case 85-1431 we remind appellant that this docket number has been closed since March 22, 1985. Accordingly, this court will entertain no motion with respect to Case No. 85-1431. To the extent that the motion seeks to supplement the record in consolidated cases 84-2322 and 85-2348 due to the withdrawal of an envelope of pleadings by a law clerk such request is denied as unnecessary.

On October 8, 1985, appellant filed awith this court a "MOTION TO THE FULL COURT COMPELING (SIC) CLERK TO INSTANTER FILE AND MAIL ANY ORDER COMING DOWN IN PRO SE CASES 84-2322, 85-2348, and 85-1431 to the CORRECT ADDRESS 46 Emerald Lane, Fairview

Heights, Il. 62208 or be Held in Contempt for Failure to Comply and Thereby Delaying Pro Se, Affidavit in Support: and/or for Court to Review Motions, and Orders Denying Reconsiderations Filed September 6, 1985 and September 16, 1985 and so Delayed by Clerk's Mailing together September 30, 1985 to Incorrect Address 122 East Shore Drive Belleville, Illinois to Incorrect Address 122 East Shore Drive Belleville, Illinois 62221; and/or to correct Typographical Error in Number 9 of pro se motion to make certain; Mailed October 4, 1985 from April 14, 1985 to April 12, 1985, Copy Appearance Docket 85-1431 Attached Hereto in Support: and/or to Compel Clerk to Locate and File in 85-1431 and 84-2322 52 page motion to Judge Coffey for an Order of Mandamus Compelling Clerk to Perform its Duty and File: Petition for Review and Serve a Copy of Notice of Filing of Said Petition for Consideration Three Judge Panel Et Seq Request to Interlocutory Appeal and Correct the Record with Memorandum and Others Made and Mailed March 20, 1985 with Affidavit in Support: and/or to Supplement the Record." To the extend that this motion requests the Court to ascertain movant's correct address, such request is granted, the Court having ascertained that movant's correct address is on all records associated with the consolidated cases. To the extent that the motion requests further review of the Court's dispositions of previous motions filed herein, such relief is denied. All further relief sought is hereby denied as moot, as a copy of the Petition for Review has been duly filed with this court.

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AFFIDAVIT OF SERVICE

I, affiant, Terry Lynn Schuchman do solemnly affirm, that on this 5th day of May, 1986 I did hand deliver to the U.S. Postal Service 40 copies of this Appendix C, as required by letter of Joseph F. Spaniol, Jr., Clerk U.S. Supreme Court, dated April 30, 1986 and received May 3, 1986, and did tender the fee for registered mailing to the Clerk, U.S. Supreme Court, Joseph F. Spaniol Jr., Washington D. C. 20543 and on this same day I mailed copies by certified mail, return receipt requested, to:

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NOTARY PUBLIC

Subscribed and swor

Day of May 19